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Sup. Ct.

**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1940**

**No. 201**

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**LEON C. PHILLIPS, INDIVIDUALLY AND AS GOV-  
ERNOR OF THE STATE OF OKLAHOMA, MAC Q.  
WILLIAMSON, INDIVIDUALLY AND AS ATTOR-  
NEY GENERAL OF THE STATE OF OKLAHOMA,  
ET AL, ETC., APPELLANTS;**

**vs.**

**THE UNITED STATES OF AMERICA, GRAND RIVER  
DAM AUTHORITY, RAY McNAUGHTON, ET AL.  
ETC.**

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**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF OKLAHOMA**

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**FILED JULY 2, 1940.**



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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

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vs.

THE UNITED STATES OF AMERICA, GRAND RIVER DAM AUTHORITY, RAY McNAUGHTON, ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OKLAHOMA

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[fol. 1]

[Caption omitted]

[fol. 2]

**IN UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

Civil Action No. 351

THE UNITED STATES OF AMERICA

v.

LEON C. PHILLIPS, individually and as Governor of the State of Oklahoma; Mac Q. Williamson, individually and as Attorney General of the State of Oklahoma; Louis A. Ledbetter, individually and as Adjutant General of the National Guard of the State of Oklahoma; The State Highway Commission of Oklahoma, a body corporate; S. H. Singleton, George Meacham, and H. E. Bailey, individually and as Members of the State Highway Commission; Grand River Dam Authority, a body corporate authorized and existing under the laws of Oklahoma; Ray McNaughton, H. Eichenberger, Earl Ward, R. P. Colley, and M. Duncan, individually and as Directors of the Grand River Dam Authority, T. P. Clonts, individually and as General Manager of Grand River Dam Authority; W. R. Holway, individually and as Consulting Engineer of Grand River Dam Authority; Massman Construction Company, Inc., a corporation organized under the laws of Missouri; and The First National Bank of Miami, a national banking association organized under the laws of the United States and having its principal place of business in Miami, Oklahoma; individually and as trustee under an indenture dated as of April 1, 1938.

COMPLAINT—Filed March 19, 1940

This is a suit of a civil nature brought by the United States, of which this Court has original jurisdiction under paragraph (1) of Section 24 of the Judicial Code, as amended, (28 U. S. C. §41(1)).

1. The United States of America is a body sovereign and politic and brings this action by Whitfield Y. Mauzy, its Attorney for the Northern District of Oklahoma, acting [fol. 3] at the direction of the Attorney General.

2. Leon C. Phillips is the duly qualified and acting Governor of the State of Oklahoma and Commander-in-Chief of its National Guard and Militia.

3. Mac Q. Williamson is the duly qualified and acting Attorney General of the State of Oklahoma.

4. Louis A. Ledbetter is the duly qualified and acting Adjutant General of the National Guard of the State of Oklahoma.

5. The State Highway Commission is an agency of the State of Oklahoma created and functioning by virtue of the Oklahoma Session Laws of January 11, 1939, House Bill No. 1.

6. S. H. Singleton, George Meacham, H. E. Bailey, are the duly qualified and acting members of the Oklahoma State Highway Commission.

7. Grand River Dam Authority is a conservation and reclamation district constituting a public corporation created and existing by virtue of Article 4 of Chapter 70 of the Session Laws of 1935 of the State of Oklahoma, as amended, and having its domicile and principal place of business at Vinita, Oklahoma.

8. Ray McNaughton, H. Eichenberger, Earl Ward, R. P. Colley, and M. Duncan, are the Members of the Board of Directors of Grand River Dam Authority and are residents of the Northern District of Oklahoma. T. P. Clonts is the General Manager of said Authority. W. R. Holway is the Consulting Engineer thereof.

9. Massman Construction Company, Inc., a corporation duly organized and existing under the laws of the State of [fol. 4] Missouri, is the general contractor with said Authority for the construction of the dam hereinafter referred to, and is doing business in the State of Oklahoma.

10. The First National Bank of Miami is a national banking association duly organized and existing under the laws of the United States, having its principal place of business at Miami, Oklahoma, and is trustee under a certain indenture of trust, dated as of April 1, 1938, entered into by and between said Bank and said Authority and pursuant to which there have been issued the bonds of said Authority hereinafter referred to and held by the United



States. A copy of said indenture of trust, marked "Exhibit A", is attached hereto and made a part hereof.

11. During the early Fall of 1937 the United States by the Federal Emergency Administrator of Public Works, acting with the approval of the President, made an allotment to aid in financing the construction of a dam on the Grand River in the State of Oklahoma, together with hydroelectric generating plant and transmission lines, including necessary equipment and the acquisition of the necessary land and rights of way therefor. The purpose of said dam was to provide water storage for flood control and hydroelectric power development. Said allotment was for a loan in an amount of \$11,563,000 and for a grant in the amount of forty-five per cent of the cost of the project, but not to exceed \$8,437,000.

12. On October 16, 1937, the United States by its Federal Emergency Administrator of Public Works, made a formal written offer to the defendant Grand River Dam [fol. 5] Authority pursuant to said allotment and said offer was accepted in writing by the Authority on that date. The acceptance of said offer contained a covenant obligating the Authority to complete the project, including the dam to a height of 755 feet, not later than March 30, 1940. A copy of said offer, as modified by subsequent waivers, marked "Exhibit B", is attached hereto and made a part hereof.

13. Pursuant to its obligation under said offer, the United States has purchased and is now the owner and holder of \$11,563,000 aggregate principal amount of the bonds of the defendant Grand River Dam Authority issued pursuant to and secured by said indenture dated as of April 1, 1938, referred to in paragraph 10 hereof. Such bonds are secured by a first pledge of and are payable solely from the revenues of the Flood Control and Hydro-Electric Project after payment of reasonable and proper expenses of maintenance and operation. Any indebtedness, liability or obligation of said Authority, for the payment of money including any claim of the State of Oklahoma is payable solely out of said revenues and subject to the prior lien thereon of said bonds held by the United States. The sole security for said bonds is the revenue to be derived from said Project, and in the event of a default under the in-

indenture securing said bonds the United States may cause to be appointed a receiver to take possession of and operate said project for the benefit of holders of such bonds all as in said indenture provided. The United States has a property interest in said Project by way of security for its bonds. The United States has also paid \$6,562,500 of the grant. Neither the State of Oklahoma nor any of its agencies have contributed any funds whatever towards the cost of the project.

[fol. 6] 14. The defendant Grand River Dam Authority commenced construction of the said Flood Control and Hydro-Electric Project on or about February 7, 1938, and has now virtually completed the construction of the main dam. As of February 20, 1940, the total amount actually disbursed by said Authority for all purposes in connection with such construction was approximately \$14,984,000, and was paid for solely out of funds furnished by the United States by way of the loan and grant above referred to. Unless such dam be completed the purposes of said grant will be wholly frustrated and the security for such loan will be completely impaired.

15. But for the acts of the defendants Phillips, Ledbetter, State Highway Commission, Singleton, Meacham, and Bailey, hereinafter referred to, said dam would have been completely constructed by April 15, 1940; and but for the acts of these defendants, hereinafter described, the defendant Grand River Dam Authority would have been prepared to flood the lands behind the dam by April 15, 1940. The lands to be flooded are hereinafter referred to as the reservoir area.

16. Prior to construction of said dam, the defendant Grand River Dam Authority secured a license from the Federal Power Commission, an independent agency of the United States, to build said dam on the bed of the Grand River, a tributary of a navigable river of the United States, and to impound the waters of said Grand River for the purposes of the project. Said license includes sundry covenants to be performed on the part of said Authority and constitutes a contract by it with the United States. Under said license, and the covenants of said Authority included therein, the defendant Grand River Dam Authority is obligated to the United States to main-

tain said Dam at a height of 755 feet. A copy of said license, marked "Exhibit C", is attached hereto and made a part hereof.

17. It is necessary for the defendant Grand River Dam Authority to complete said Dam and to commence the flooding of the area included in the project immediately, before the expected onset of the spring floods in April, 1940, and the said Authority is so contractually obligated to the United States so to do under the license, the loan, the grant, the indenture, and the bonds above referred to. Unless said Dam can promptly be closed the normal spring floods on the Grand River will endanger and may seriously damage or destroy said Dam. Unless said Dam can promptly be closed and the reservoir area flooded it will probably be impossible to impound sufficient waters absolutely necessary for the power operations of the Authority for the coming year, and there will be no revenues available for payment of principal of or interest on said bonds. The revenues derivable from such project (including said Dam) are the only security and source which the United States has for the payment of principal or interest on the bonds which it holds.

18. The Oklahoma statute creating Grand River Dam Authority expressly authorizes the flooding of any public lands and public property situated within said reservoir area, by the provisions of section 2(h) thereof. Said statute also provides, by sections 2(h) and 9 thereof, that the liability to pay damages to the State of Oklahoma or its subdivisions shall be payable solely out of the revenues of the project and subject to the prior lien on such revenues of the bonds of the United States. Said statute was enacted, at least partially, for the purpose of inducing the United States to finance said project; and the loan and grant by the United States above referred to were made in reliance on the provisions of such statutes.

19. While the Dam was under construction, a question arose as to the obligation of the defendant Grand River Dam Authority to reimburse the defendant State Highway Commission for the State roads to be flooded by the project. On information and belief, during or about the month of March, 1938, the defendants Grand River Dam Authority and State Highway Commission agreed that if the defend-



ant Grand River Dam Authority would construct a highway bridge located in Delaware County, Oklahoma in Township 25, North, Range 23, east approximately  $3\frac{1}{2}$  miles northwest of the town of Grove, the defendant State Highway Commission would accept this in full payment of the said Authority's obligation to pay for flooded roads. Thereafter, said bridge was built by said Authority at a cost of \$369,083 and said bridge is now completed and actually in use by the public. Said agreement and the building of said bridge has discharged any and all liability which might otherwise attach to said Authority by reason of the flooding of any State roads.

20. Thereafter, further controversy arose as to the obligation of the defendant Grand River Dam Authority under said Oklahoma statute and defendant Phillips threatened to prevent completion of said Dam and flooding of the project area unless said Authority of the United States of America would make provision for compensating the State Highway Commission for flooded roads above and beyond the statutory provisions for the source and time for payment of such compensation. On information and belief [fol. 9] said threats were part of a scheme on the part of the defendant Phillips to exact for the State of Oklahoma from the United States money in payment for flooded roads, which payment the United States would be induced to make in order to prevent the frustration of the purpose of the grant from the United States and the destruction of the security for the bonds owned by the United States.

21. Failing to obtain such further provisions for compensation on account of flooded roads, from the defendant Grand River Dam Authority, or from the United States and in furtherance of such plan, the defendant Phillips on March 13, 1940, declared martial law in an area surrounding the Dam-Site but in said area only, and ordered defendant Ledbetter to occupy said area with the military forces of the State and to maintain the same against all interference with units of the National Guard, and to stop all work on the Grand River Dam. Troops were dispatched pursuant to such orders on or about the 13th day of March, 1940, and interfered with the work on said Dam and prevented its closing by said Authority, its officers and agents.

22. At no time before or after said proclamation of martial law or during the pendency of martial law as thus de-

clared by defendant Phillips was there any insurrection, rioting, tumult or violence in and about the said Dam-Site and Project area. At no time, save in the actions of the defendant Phillips and Ledbetter and their military subordinates, which interfered with the completion of the said Dam by defendant Grand River Dam Authority, were the processes of law interfered with or lawless acts committed. At no time were the local law enforcement authorities unable to perform their duties, nor were the civil courts closed or their processes interfered with in any way. Said declaration of martial law and all action taken by the defendants [fol. 10] Phillips and Ledbetter pursuant thereto are in contravention of the Constitution of the United States, and in particular of the Fourteenth Amendment thereto.

23. Thereafter on or about the 15th day of March, 1940, the defendants Phillips and Ledbetter withdrew some of the units of the Oklahoma National Guard stationed at the Dam-Site, retaining there, however, certain military personnel who continued to exercise some degree of martial control.

24. The defendant Phillips has not revoked his declaration of martial law. The defendants Phillips and Ledbetter have at no time disclaimed either their right or their intention to reorder the troops back to the Dam-Site and their maintenance of military personnel thereat constitutes a threat to order additional military forces to the project area. Defendant Phillips has threatened to prevent by any means the closing of the dam until the claimed damages for flooding state roads have been paid in advance or secured in advance.

25. Thereafter, on March 14, 1940, the defendants Phillips, Williamson, State Highway Commission, Singleton, Meacham, and Bailey in further pursuance of the scheme above referred to, caused to be filed in the District Court of Ottawa County, Oklahoma, a suit numbered 15174, and entitled "State of Oklahoma ex rel. Leon C. Phillips, Governor, and State Highway Commission v. Grand River Dam Authority, Ray McNaughton, H. Eichenberger, Earl Ward, R. P. Colley, and M. Duncan as members of the Board of Directors of the Grand River Dam Authority; T. P. Clonts, General Manager of the Grand River Dam Authority; W. H. Holway, Chief Engineer of the Grand River Dam

Authority; and Massman Construction Company, Inc., a corporation." Said suit sought, inter alia, an injunction against the completion of the Dam and against its closing. [fol. 11] A temporary restraining order was issued ex parte by said Court and the cause has been set for hearing on the issuance of a temporary injunction for Wednesday, March 20, 1940. Neither the United States nor any agency or officer was made a party thereto nor given notice of any of the proceedings therein. Copies of the complaint and the restraining order in said suit, marked "Exhibit D," are attached hereto and made a part hereof.

26. Complainants in said suit also seek an injunction against the defendant Grand River Dam Authority to restrain said Authority from raising the level of the said Dam higher than 700 feet. Said injunction if complied with would violate the terms of the license granted to said Authority by the Federal Power Commission, and would also violate the terms of the covenants contained in the loan and grant agreement pursuant to which the United States advanced the funds for the construction of the project.

27. Any of the relief sought in said proceedings would if granted or obeyed, cause the violation of the terms of the license, the indenture, and the loan and grant agreement; would frustrate the purpose of the Federal license, grant and loan; and would seriously endanger or actually destroy the security for the bonds owned by the United States and the property interest of the United States, and would be a confiscation of said bonds and property.

28. Said proceeding in the District Court of Ottawa County, Oklahoma, is not an adversary proceeding. Said suit is a friendly suit and not a genuine controversy. The defendants McNaughton, Eichenberger, Ward, Colley, and Duncan, members of the Board of Directors of the Grand River Dam Authority are appointed by the defendant Phillips and are subject to removal by him for "inefficiency, neglect of duty, or misconduct in office" upon mere ten days' written notice by the defendant Phillips to such directors without any hearing, all as provided in Section 3, [fol. 12] Article 4, Chapter 70, Session Laws of Oklahoma for 1935, as amended to date. The defendants Singleton, Meacham and Bailey, members of the defendant State Highway Commission, are appointed by the defendant



Phillips, by and with the advice and consent of the Senate of the State of Oklahoma, but are removable by the defendant Phillips alone, all as provided in Section 2 of the Oklahoma Session Law of January 11, 1939, House Bill No. 1. Said suit in the District Court of Ottawa County is therefore in substance and effect, a suit by the Governor of Oklahoma against the Governor of Oklahoma to rewrite the terms of said Article IV of Chapter 70 of the Session Laws of Oklahoma of 1935, upon which statute the United States relied in advancing funds for the construction of the project, and which was itself one of the inducements for the loan and grant hereinbefore referred to.

29. Because of the possibility of destructive spring floods, any delay in effecting the closing of the Dam threatens its destruction. Accordingly, the proceedings in the State court, and particularly any restraining orders or injunctions which are now or may hereafter be made, enforced, or obeyed, enjoining the construction or the closing of the Dam, amount to a confiscation of a valuable property interest of the United States.

30. The United States has no remedy available in said State court suit, which is, in substance and effect, a suit affecting the property of the United States. No officer of the United States is authorized to submit the United States to the jurisdiction of that court in a cause for which Congress has not consented that the United States be sued.

31. None of the defendants Phillips, Williamson, State Highway Commission, Singleton, Meacham, and Bailey, took any steps to enjoin defendant Grand River Dam Authority from receiving an allotment from the United States [fol. 13] as aforesaid, from accepting the offer from the United States as aforesaid, from issuing its bonds or from constructing said Dam, but on the contrary acquiesced in all such actions until the 13th day of March, 1940, when the defendant Phillips declared martial law as aforesaid. Since November, 1939 all said defendants had knowledge of the intention of the Authority to inundate said roads without further prepayment of damages therefor, and without excuse delayed the bringing of said injunction proceeding in said State court until the eve of said closing of the dam.

32. On information and belief, none of the defendants hereto, either severally or in the aggregate, are financially



able to respond in damages to the United States to the extent of \$11,563,000, being the value of the property interest of the United States herein sought to be protected, and which is in immediate danger of being severely damaged and rendered totally inoperative by reason of the acts of the defendants hereinbefore set out.

33. Therefore, because all other remedies are inadequate, the United States prays for temporary and permanent relief as follows:

(a) For an order temporarily restraining the defendants herein from any further interference with the construction or closing of said Dam as aforesaid until such time as this Court can hear the motion for a temporary injunction herein contained;

(b) For an order enjoining the defendants, and each of them, from interfering in any manner with the construction or closing of the Grand River Dam;

(c) For an order commanding the defendants, and each of them, to cause to be vacated any and all restraining orders heretofore entered in that certain suit now pending [fol. 14] in the District Court of Ottawa County, Oklahoma, numbered 15174 and entitled "State ex rel. Phillips, et al. v. Grand River Dam Authority, et al.;"

(d) For an order restraining the defendants, and each of them, from taking any steps toward the enforcement of any such restraining orders in said pending suit, or from commencing any other proceedings seeking the same or substantially similar relief;

(e) For an order commanding the defendants, and each of them, to cause to be dismissed the said pending suit;

(f) For an order restraining the defendants Phillips and Ledbetter from causing the Oklahoma National Guard or any part thereof or any military force whatsoever to interfere with or prevent the construction or closing of the Grand River dam, or from using any military force pursuant to the declaration of martial law promulgated by the defendant Phillips on the 13th day of March, 1940;

(g) For an order restraining the defendants, and each of them, from using or causing to be used any force, military or otherwise, or any process, judicial or otherwise (other

than by proper application in the present cause), to interfere with or prevent the construction or closing of the Grand River Dam;

(h) For an order restraining the defendants, and each of them, from taking any step whatsoever impairing the specific, prompt, and timely performance by the Grand River Dam Authority of the covenants contained in its license from the Federal Power Commission, and in its indenture dated as of April 1, 1938, with the First National Bank of Miami;

(i) For an order restraining the defendants, and each of them, from taking any action in frustration of the purpose of the loan and grant made by the United States of America to the Grand River Dam Authority, or from interfering with the performance by said Authority of its covenants with the United States of America;

[fol. 15] (j) For an order restraining the defendants, and each of them, from taking any action which will impair or tend to impair the property rights or the security of the United States in the Grand River Dam;

(k) For an order commanding defendants Grand River Dam Authority, McNaughton, Eichenberger, Ward, Colley, Duncan, Clonts, Holway, and Massman Construction Company to specifically perform all those certain covenants contained in said license from the Federal Power Commission, in said indenture dated as of April 1, 1938, and in said loan and grant agreement with the United States;

(l) For an order determining and declaring the rights, duties and liabilities of the defendants Grand River Dam Authority and State Highway Commission in respect of the compensation to be paid for flooded roads in the reservoir area;

(m) For an assessment of any damages heretofore caused the United States by the defendant Phillips, and for any acts done, ordered, or counselled by him to be done, and for judgment therefor against him personally with costs; and

(n) For such further relief as may seem proper.

The United States moves that there be issued an injunction pendente lite restraining and commanding the acts set

out in paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (n); and prays that said motion be set down for hearing at the earliest possible date.

[fol. 16] The United States of America, by (S.) Francis M. Shea, Assistant Attorney General; (S.) Whitfield Y. Mauzy, United States Attorney; (S.) Sidney J. Kaplan, Special Assistant to the Attorney General; (S.) Frederick Bernays Wiener, Special Assistant to the Attorney General. (S.) Maxwell H. Elliott, Jr., Counsel, Public Works Administration, Of Counsel.

[fols. 17-18].. *Duly sworn to by E. W. Clark and John M. Carmody. Jurats omitted in printing.*

[File endorsement omitted.]

[fol. 19] EXHIBIT "A" TO COMPLAINT

CERTIFICATE OF EXECUTIVE OFFICER

I, J. J. Madigan, Do Hereby Certify as follows:

(1) That I am the duly appointed Executive Officer of the Public Works Administration, Federal Works Agency, and that by virtue of my office I am the proper custodian of the records of said Public Works Administration, Federal Works Agency,

(2) That I have compared the annexed copies of

Indenture dated as of April 1, 1938, between the Grand River Dam Authority and the First National Bank of Miami, Oklahoma, as trustee, to secure the payment of the principal of and interest on the Grand River Dam Authority 4% Revenue Bonds of like date and in an aggregate authorized principal amount of \$12,500,000, and

Certificate dated March 14, 1939, of Owen L. Butler, Secretary of the Board of Directors of the Grand River Dam Authority,

the originals of which are on file in the records of my office; and the same are true and correct copies thereof and of the whole of said originals and

(3) That the Public Works Administration, Federal Works Agency, has no seal.

In Witness Whereof I have hereunto set my hand this eighteenth day of March, nineteen hundred and forty.

J. J. Madigan, Executive Officer, Public Works Administration, Federal Works Agency.

[fols. 20-21]

EXHIBIT "Z"

O. L. B.

Grand River Dam Authority and The First National Bank  
of Miami as Trustee

Indenture

Dated as of April 1, 1938

\$12,500,000.00

4% Revenue Bonds

[fol. 22] This Indenture for convenience dated as of the first day of April, 1938, by and between Grand River Dam Authority, a conservation and reclamation district constituting a public corporation, duly organized and existing under and by virtue of the laws of the State of Oklahoma (hereinafter called the "Authority"), party of the first part, and The First National Bank of Miami, a national banking association, duly organized and existing under and by virtue of the Laws of the United States of America and having its principal office in the city of Miami, in said State of Oklahoma (hereinafter called the "Trustee"), as trustee, party of the second part.

Whereas, the Authority has been created and organized pursuant to and in accordance with the provisions of Article 4 of Chapter 70 of the Session Laws, 1935, of the State of Oklahoma, as amended (hereinafter sometimes termed the "Act"), to carry out the purposes set forth in the Act, including the control, storing, preservation and distribution of the waters of the Grand River and its tributaries for irrigation, power and other useful purposes, the reclamation and irrigation of arid, semi-arid and other lands needing irrigation, and the conservation and development



of the forests, water and hydro-electric power of the State of Oklahoma; and

Whereas, by virtue of the Act, the Authority is authorized and empowered to construct or otherwise acquire, extend, improve, reconstruct, maintain, use and operate any and all facilities of any kind necessary or convenient to the exercise of its powers or carrying out of its purposes, including dams, reservoirs, canals, hydro-electric plants, power plants and other works, and also including the Project and System hereinafter referred to, all as more fully set out in the Act; and

Whereas, by virtue of the Act, the Authority is further authorized and empowered to borrow money for its corporate purposes and to make and issue its negotiable bonds for monies borrowed, payable out of the revenues received by the Authority in respect of its properties; to pledge as security for the payment of the principal of and the interest [fol. 23] on such bonds and of the sinking fund and reserve fund payments agreed to be made in respect thereof all or any part of the gross or net revenues received by the Authority from whatever source derived; and to fix and collect rates and charges sufficient to pay all expenses of operation and maintenance, the principal of and interest on all bonds, to make all sinking fund and reserve fund payments agreed to be made in respect of such bonds and to fulfill the terms of any agreements made with the holders of such bonds or with any person in their behalf; and

Whereas, the Authority has, by resolutions of its Board of Directors, duly determined to construct and acquire the Project hereinafter described upon or along the Grand River, in the State of Oklahoma, and in order to defray the cost of such construction and acquisition and other costs in connection therewith, to create an issue of its bonds, to be known as "Grand River Dam Authority 4% Revenue Bonds" (hereinafter sometimes termed the "Bonds") to be limited to an aggregate principal amount of \$12,500,000, and to mature serially as hereinafter set forth, and, in order to secure the payment thereof, has duly consented to and authorized the execution and delivery of this Indenture (herein called the "Indenture"), and issue of the Bonds and the pledging of its revenues in accordance with the provisions herein set forth; and

Whereas, the Bonds are to be issued as bearer coupon bonds registerable as to principal, in the denomination of

\$1,000, and the Bonds, the interest coupons to be attached thereto and the registration certificate, the Trustee's certificate, the State Auditor's certificate and the Attorney General's certificate to be endorsed upon the Bonds, are to be, respectively, in substantially the following forms; with appropriate insertions, omissions and variations as in this Indenture provided:

[fol. 24]

(FORM OF BOND)

No. —

\$1,000

United States of America

State of Oklahoma

Grand River Dam Authority

4% Revenue Bond

Grand River Dam Authority (hereinafter called the "Authority"), a conservation and reclamation district organized and existing under the laws of the State of Oklahoma, for value received, hereby promises to pay, but only out of the special funds hereinafter mentioned, to the bearer, or if this Bond be registered as to principal as hereinafter provided to the registered holder hereof, on the first day of April, 19— (unless this Bond shall have been duly called for previous redemption and payment made or provided for, as provided in the Indenture herein referred to), the principal sum of One Thousand Dollars (\$1,000) and to pay interest on such principal sum, but only out of such special funds, from the first day of April, 1938, at the rate of four per cent (4%) per annum, on October 1, 1938, and thereafter semi-annually on the first day of April and the first day of October in each year until payment of such principal sum, but until maturity hereof only in accordance with and upon presentation and surrender of the respective interest coupons hereto attached as they severally mature, both the principal of and interest on this Bond to be payable at the office of The First National Bank of Miami, in the City of Miami, Oklahoma, the Trustee under the Indenture hereinafter referred to, or, at the option of the holder, at the principal office of The Chase National Bank of the City of New York, in the Borough of Manhattan, City and State of New York, in such coin or currency as may be, on the respective

dates of payment thereof, legal tender for the payment of public and private debts.

This Bond is one of an authorized issue of special obligations of the Authority known as "4% Revenue Bonds" (hereinafter called the "Bonds") of Grand River Dam [fol. 25] Authority, issued for the purpose of securing funds to pay the cost of construction and acquisition of the Project hereinafter referred to, and other costs in connection therewith, in full conformity with the Constitution and laws of the State of Oklahoma and the resolutions of the Board of Directors of the Authority duly adopted prior to the issue hereof, and is payable solely from the revenues, income, profits, tolls, rents and returns (herein and in the Indenture called "Revenues") of the Authority from whatever source derived, after payment of reasonable and proper expenses of maintenance and operation. All of said Revenues are and will be set aside in a special fund duly established by the Authority (herein and in the Indenture called the "Revenue Fund"). After payment out of the Revenue Fund of reasonable and proper expenses of operation and limited expenses of ordinary maintenance of the System hereinafter referred to (including the establishment and maintenance of an Operating Fund for said purpose), the Authority covenants that it will set aside in a special fund duly established by the Authority (herein and in the Indenture called the "Sinking Fund") an amount sufficient to pay the interest on and principal of the Bonds, as the same shall become due, and to maintain reasonable reserves therefor; and any monies then remaining in the Revenue Fund may be used to pay interest on or principal of other bonds or obligations of the Authority issued subject to the limitations set forth in the Indenture or for any other corporate purpose.

The Authority hereby covenants and warrants that, for the payment of this Bond and other Bonds of this issue with interest thereon as herein and in the Indenture provided, it will create and maintain said Revenue Fund and said Sinking Fund and deposit in the Revenue Fund all Revenues of the Authority from whatever source derived, including, but without limitation, all Revenues received from or in respect of a project (described in the Indenture) consisting of a dam on the Grand River to provide water storage for the purpose of flood control and hydro-electric power development, together with a power plant building, equipment and

transmission lines, and other property and rights (herein [fol. 26] and in the Indenture called the "Project"), and from each and every part thereof, and all improvements, replacements, renewals and extensions thereof, and additions thereto (the Project together with such improvements, replacements, renewals, extensions and additions being herein called the "System"), as herein and in the Indenture provided, and out of such Revenues (after payment of reasonable and proper expenses of maintenance and operation as hereinabove and in the Indenture provided) and as an irrevocable charge thereon will pay this Bond and all other Bonds of this issue with interest accruing thereon, in accordance with the terms hereof and the terms and provisions of the Indenture.

The Authority further covenants and warrants that all of the requirements of law have been fully complied with in the creation and organization of the Authority, in the corporate proceedings preliminary to the authorization of this Bond, and the issue of which this Bond is a part, in authorizing and executing the Indenture securing said issue and in the issue and negotiation of this and all other Bonds of said issue; and that the outstanding indebtedness and all other obligations of the Authority, including this Bond and all other Bonds of said issue, do not exceed any constitutional or statutory restrictions or limitations.

Each of the Bonds of the issue of which this Bond forms a part is for the principal sum of \$1,000, and said issue is limited to an aggregate principal amount of \$12,500,000 maturing serially as provided in the Indenture. Of said Bonds an aggregate principal amount of not exceeding \$11,563,000 is to be presently issued. The remaining Bonds of said issue may be issued from time to time, upon the conditions and subject to the limitations set forth in the Indenture, for the purpose of defraying the cost of additions, extensions and betterments to the System.

All Bonds of said issue are issued and to be issued under and equally and ratably secured by an Indenture dated as of April 1, 1938 (herein called the "Indenture"), executed and delivered by the Authority to The First National Bank of Miami (herein called the "Trustee"), as trustee, to which [fol. 27] Indenture reference is hereby made for a specific description of the Revenues and special funds pledged thereunder, the nature, extent and manner of enforcement of



such security, and a statement of the rights of the bearers or registered owners of the Bonds and of the Trustee with respect to such security, and of the agreements of the Authority in respect thereof; all under and pursuant to the Constitution and laws of the State of Oklahoma, particularly Article 4 of Chapter 70 of the Session Laws, 1935, of the State of Oklahoma, as amended, and pursuant to and in conformity with resolutions duly adopted by the Board of Directors of the Authority.

In case of the happening of an event of default as specified in the Indenture, the principal of all the Bonds outstanding thereunder may be declared or may become due and payable before the maturity thereof in the manner and with the effect in the Indenture provided.

This Bond, except when registered as to principal otherwise than to bearer, shall pass by delivery. It may be registered as to principal only in the name of the holder, on the books of the Authority at the office of the Trustee in the City of Miami, Oklahoma, such registration to be noted hereon, and if so registered no transfer hereof shall thereafter be valid unless made on the books of the Authority at said office by the registered owner in person or by his duly authorized attorney and similarly noted on this Bond. If registered, it may be discharged from registration by being in like manner registered to the bearer. No registration shall affect the negotiability of the attached coupons, which shall continue to be transferable by delivery.

This Bond and all other Bonds of this issue are negotiable. Each and every successive holder of this Bond, during such time or times as it is payable to bearer, and of each of the interest coupons hereto appertaining, is conclusively presumed to forego and renounce his equities in favor of subsequent holders for value without notice, and to agree that this Bond, while so payable to bearer, and each of the coupons hereto appertaining, may be negotiated by delivery by any person having possession thereof; howsoever such possession may have been acquired, and that any holder who shall have taken this Bond, while so payable to bearer, or any of said coupons from any person for value and without notice, shall thereby acquire absolute title hereto or to such coupon, as the case may be, free from any defenses enforceable against any prior holder and free from all equities and claims of ownership of any such prior holders, and the Authority, the Trustee and any paying

agent may deem and treat the bearer of this Bond, or if registered, the person in whose name it is registered, and the bearer of any interest coupon appertaining thereto, as the absolute owner thereof for all purposes.

This Bond and all other Bonds of this issue are subject to redemption, at the option of the Authority, upon any interest payment date, as a whole or in part in the inverse order of maturities (selection between Bonds of the same maturity to be made by the Trustee by lot in case less than all of the Bonds of any maturity are to be redeemed), at a price per Bond equal to the principal amount thereof plus accrued interest to the redemption date, together with a redemption premium equal to one-fourth of one per cent ( $\frac{1}{4}\%$ ) of the principal amount thereof for each year or fraction thereof from the redemption date to the date of maturity, provided, however, that in no event shall such redemption premium exceed five per cent (5%) of such principal amount, upon not less than thirty (30) days' prior notice given as provided in the Indenture, by publication in a daily newspaper published and of general circulation in the City of Miami, Oklahoma, and in a daily newspaper published and of general circulation in the Borough of Manhattan, City and State of New York, or, in lieu of either of said daily newspapers, in a recognized daily financial journal published and of general financial circulation in said City of Miami, or said Borough of Manhattan, as the case may be, and by mailing written notice to any registered owners of Bonds, all in the manner and upon the terms and conditions provided in the Indenture.

To the extent permitted by the terms of the Indenture, the Indenture may be amended by agreement between the Trustee and the Authority, with the written consent of the holders of 75% in principal amount of the then outstanding Bonds.

[fol. 29] This Bond shall not be entitled to any benefit under the Indenture or be valid or become obligatory for any purpose until this Bond shall be authenticated by the certificate endorsed hereon duly signed by The First National Bank of Miami, as Trustee, or its successor in the trust.

In Witness Whereof, Grand River Dam Authority has caused this Bond to be executed in its name by the Chairman or Vice-Chairman of its Board of Directors thereunto duly authorized, and the corporate seal of said Authority

to be hereunto affixed and attested by its Secretary or an Assistant Secretary, and the interest coupons hereto attached to be executed by the facsimile signature of its Treasurer, all as of the first day of April, 1938.

Grand River Dam Authority, by — — —, Vice-Chairman.

Attest: — — —, Assistant Secretary.

(Form of Coupon)

Number — \$20.00

On — — —, 19—, unless the Bond hereinafter mentioned shall have been duly called for previous redemption and payment of the redemption price duly made or provided for, Grand River Dam Authority, a public corporation of the State of Oklahoma, will pay to the bearer, at the office of The First National Bank of Miami, in the City of Miami, Oklahoma, or, at the option of the bearer, at the principal office of The Chase National Bank of the City of New York, in the Borough of Manhattan, City and State of New York, but only out of the special funds mentioned in the Bond hereinafter referred to, the sum of Twenty Dollars (\$20.00) in such coin or currency as may be, on the date of payment hereof, legal tender for the payment of [fol. 30] public and private debts, being six months' interest then due on its 4% Revenue Bond, dated April 1, 1938, Number —.

— — —, Treasurer.

(Form of Registration Certificate for Bonds)

#### REGISTRATION CERTIFICATE

The within Bond is registered as to principal on the books of Grand River Dam Authority in the name of the last owner named below, and the principal amount of said Bond shall be payable to such owner only, unless the last registration shall be to bearer:

Date of Registration	Registered Owner	Signature of Registrar
.....	.....	.....
.....	.....	.....
.....	.....	.....

Date of Registration	Registered Owner	Signature of Registrar
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

## (Form of State Auditor's Certificate)

## CERTIFICATE OF STATE AUDITOR

UNITED STATES OF AMERICA,  
State of Oklahoma, ss: —

I, the undersigned, State Auditor of the State of Oklahoma, hereby certify that there is on file and of record in my office a certificate of the Attorney General of the State of Oklahoma approving this Bond and the proceedings for the issuance thereof and certifying that this Bond and the proceedings for the issuance thereof have been examined by him as required by law, and that he finds that this Bond has been issued in accordance with law and in conformity [fol. 31] with the Constitution and Laws of the State of Oklahoma, and that it is a valid and binding special obligation of said Grand River Dam Authority, payable from the revenues pledged to its payment by and in the proceedings authorizing the same, and I do further certify that, on the — day of —, 19—, I registered this Bond.

Witness my hand and seal of office, this — day of —, 19—.

— —, State Auditor of the State of Oklahoma.

## (Form of Attorney General's Certificate)

State of Oklahoma  
Office of the Attorney General  
Bond Department

I, the undersigned, Attorney General of the State of Oklahoma, hereby certify that I have examined a certified copy of the proceedings for the issuance of this Bond, in-



cluding the form of the Bond; that such proceedings and such Bond show lawful authority for the issuance thereof; and that this Bond has been issued in accordance with law, and is a valid and binding obligation according to its tenor and terms; and is hereby approved.

Dated ———, —.

———, Attorney General of the State of Oklahoma.

(Form of Trustee's Certificate)

TRUSTEE'S CERTIFICATE

This Bond is one of the Bonds described in the within-mentioned Indenture.

The First National Bank of Miami, Trustee, by  
———, Authorized Officer.

[fol. 32] and

Whereas, all acts, conditions and things necessary or required by the Constitution and laws of the State of Oklahoma or otherwise to exist, happen and be performed precedent to and in the execution and delivery of this Indenture do exist, have happened and have been performed, and the execution, acknowledgment and delivery of this Indenture have been in all respects duly authorized; and

Whereas, the Trustee has accepted the trusts created by this Indenture and in evidence thereof has joined in the execution hereof:

Now, therefore, this Indenture witnesseth:

That in order to secure the payment of the principal of and the interest on all Bonds issued under this Indenture, according to their tenor and effect, and the performance and observance of each and every of the covenants and conditions herein and therein contained, and for and in consideration of the premises and of the purchase and acceptance of said Bonds by the respective holders thereof, and of the sum of Ten Dollars (\$10) to it duly paid by the Trustee at or before the ensealing and delivery of these presents, and for other good and valuable considerations to it moving, receipt whereof is hereby acknowledged, the Authority has pledged, assigned and set over, and by these presents does pledge, assign and set over, unto the said Trustee, and its successors in trust and assigns, forever:

All of the revenues, income, profits, tolls, rents and returns (herein sometimes called the "Revenues") of the

Authority from whatever source derived, including, but without limitation, all Revenues received from or in respect of the System in this Indenture mentioned and described, and from each and every part thereof and all improvements, replacements, renewals and extensions thereof, and additions thereto, all in the manner herein provided.

To have and to hold such Revenues hereby pledged, assigned and set over by the Authority, or intended so to be, unto the Trustee and its successors in the trust and assigns, forever.

[fol. 33] But in trust nevertheless for the equal and proportionate benefit and security of the Bonds issued under and secured by this Indenture, and the coupons to any of them appertaining, without preference, priority or distinction as to participation in the lien, benefit and protection hereof of one Bond or coupon over or from the others by reason of priority in the issue or negotiation thereof or by reason of the date or the date of maturity thereof, or for any other reason whatsoever (except as expressly provided in this Indenture), so that each and all of such Bonds and coupons shall have the same right, lien and privilege under this Indenture and shall be equally secured hereby with the same effect as if the same had all been made, issued and negotiated simultaneously with the delivery hereof and were in the hands of innocent purchasers for value upon said date of delivery.

And it is hereby covenanted and agreed by and between the parties hereto that the terms and conditions upon which the Bonds, with the coupons for interest, are to be issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become the holders thereof, and the trusts and conditions upon which the pledged Revenues are to be held and disposed of, which said trusts and conditions the Trustee hereby accepts, are as follows:

## ARTICLE I

### Definition of Terms

Section 1.01. In each and every place in and throughout this Indenture, whenever the following terms, or any of them, are used, the same, unless the context shall indicate another or different meaning or intent, shall be construed,

are used and are intended to have meanings and to be inclusive, as follows:

(a) The term "Engineer" shall mean any engineer, firm of engineers or engineering corporation approved by the Trustee (who may be, unless hereinafter otherwise provided, an engineer in the employ of the Authority and so approved).

(b) The term "Trustee" shall mean The First National Bank of Miami, acting as Trustee under this Indenture, the [fol 34] successors and assigns of such Trustee, and any other corporation which may at any time be substituted in its place.

(c) The term "Government" shall mean the United States of America or any agency authorized to act in its behalf.

(d) The term "Loan Agreement" shall mean the agreement created by the acceptance by the Authority of the Offer, dated October 16, 1937, from the United States of America, and any amendments thereof and supplements thereto. The word "original" shall be used to indicate said Loan Agreement without such amendments or supplements.

(e) The term "Project" shall mean the dam on the Grand River to provide water storage for the purpose of flood control and of hydro-electric power development, together with a hydro-electric generating plant and transmission lines, and all water rights, permits, easements and other property used in connection therewith, to be acquired or constructed pursuant to the provisions of the Loan Agreement. After the Completion Date fixed herein, the Project shall be and mean, for all purposes of this Indenture, the property described in the Certificate of Completion.

(f) The term "Improvements" (of the Project or otherwise) shall mean all improvements and extensions of, and additions to, the Project or otherwise, as the case may be.

(g) The term "System" shall mean the Project and all Improvements thereof (or of the System) at any time constructed or acquired by the Authority.

(h) The term "Project Bonds" shall mean the \$11,563,000 principal amount of Bonds referred to in Section 3.02 hereof and issuable pursuant to the provisions of said section.

(i) The term "Revenues" shall mean the revenues, income, profits, tolls, rents and returns, from whatever [fol. 35] source derived, of the Authority, but shall not include any taxes.

(j) The term "Construction Fund" shall mean the fund so designated in Section 4.02 of this Indenture.

(k) The term "Construction Cost" or "Cost of Construction" shall mean the cost of construction of the Project, as defined in Section 4.03 of this Indenture.

(l) The term "Plans and Specifications" shall mean the drawings, plans and specifications for the construction of the Project to be filed with, and accepted by, the Government pursuant to the Loan Agreement, including any modifications thereof similarly filed and accepted.

(m) The term "Improvement Plans" shall mean the detailed plans and specifications for the construction of Improvements (to become a part of the System), to be delivered to the Trustee in connection with the issuance of Bonds for the payment of the cost of construction of said Improvements, as provided in Section 3.03 hereof.

(n) The term "Administrator" shall mean the Federal Emergency Administrator of Public Works or other person or agency designated by the President of the United States or otherwise to effectuate the purposes of Title II of the National Industrial Recovery Act or perform similar functions under the Emergency Relief Appropriation Act of 1935 or the Public Works Administration Extension Act of 1937 or other pertinent acts.

(o) The term "Project Engineer (P. W. A.)" shall mean the person designated by the Administrator to perform the functions of such Project Engineer (P. W. A.) hereunder, including any representatives designated by the Project Engineer (P. W. A.), as herein defined, for such purpose.

(p) The term "Certificate of Project Completion" shall mean the certificate as to completion of the Project, executed by the Authority and approved by the Project Engineer (P. W. A.), as required by Section 4.07 of this Indenture.

[fol. 36] (q) The term "Certificate of Completion of Improvements" shall mean the certificate as to completion of



Improvements executed by the Authority and approved by an Engineer, as required by Section 4.07 of this Indenture.

(r) The term "Completion Date," as applied to the Project or any Improvements, shall mean the date on which the applicable Certificate of Completion has been furnished to the Trustee under the provisions of Section 4.07.

(s) The term "holder of Bonds" or "Bondholder" or any similar term shall mean any person who shall be the bearer of any outstanding Bond or Bonds registered to bearer or not registered, or the registered owner of any outstanding Bond or Bonds which shall at the time be registered other than to bearer.

(t) The term "outstanding" as applied to any Bonds issued hereunder shall mean any Bonds in the hands of any person other than the Trustee as Trustee hereunder, or the Authority or any person, firm or corporation acting on behalf of the Authority.

(u) The term "operating expenses" shall mean the current expenses, paid or accrued, of operation, maintenance and repair of the System and shall include, without limiting the generality of the foregoing, administrative expenses of the Authority in connection with the System, insurance premiums and charges for the accumulation of appropriate reserves for expenses not annually recurrent but which are such as may reasonably be expected to be incurred while the Bonds are outstanding, all as may be calculated in accordance with sound accounting practice.

Section 1.02. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. The words "Bond," "coupon," "holder" and "person" shall include the plural as well as the singular number, unless the context shall otherwise indicate. The word "person" shall include corporations and associations, including public bodies, as well as natural persons, unless the context shall otherwise indicate. The term "Indenture" shall include this Indenture and all indentures supplemental hereto.

Section 1.03. Whenever in this Indenture it is provided that any fact or opinion be evidenced to the Trustee by

means of a certificate, statement, opinion or other document, it shall constitute compliance herewith if the various facts and/or opinions intended so to be evidenced to the Trustee be included in different statements, opinions or other documents signed by the same person or different persons of the same qualifications.

Section 1.04. References by number in this Indenture to any Article or Section shall be construed as referring to the Articles and Sections contained in this Indenture. The words "hereof" and "herein" and compounds thereof shall be construed as referring to this Indenture generally and not merely to the particular Article or Section in which they occur.

## ARTICLE II

### Form, Execution and Registration of Bonds

Section 2.01. This Indenture shall be and constitute a continuing lien, to the extent herein provided, to secure the full and final payment of the principal of and the interest on all Bonds which may from time to time be issued, authenticated and delivered hereunder. The aggregate principal amount of all Bonds so to be issued, authenticated and delivered hereunder shall not exceed \$12,500,000, maturing in the amounts and on April 1 of the years as follows:

Principal Amount	Date of Maturity
\$ 70,000	1943
110,000	1944, 1945, 1946, 1947
210,000	1948, 1949, 1950, 1951
320,000	1952, 1953, 1954, 1955, 1956
430,000	1957, 1958, 1959, 1960, 1961
540,000	1962, 1963, 1964, 1965, 1966
650,000	1967, 1968, 1969, 1970, 1971, 1972
800,000	1973

[fol. 38] Section 2.02. The Bonds shall be known as "Grand River Dam Authority 4% Revenue Bonds," and shall be issued as coupon Bonds, registerable as to principal, and the Bonds, the coupons attached thereto, the registration certificate and the Trustee's Certificate to be endorsed thereon, shall be substantially of the tenor and purport above set forth, with appropriate insertions, omissions, variations and substitutions as in this Indenture

provided. Such Bonds may bear such legends or endorsements as may be required by the rules of any brokerage board or securities exchange or the order of any governmental authority.

All of the Bonds shall be dated April 1, 1938, and shall bear interest from April 1, 1938, at the rate of four per cent (4%) per annum payable on October 1, 1938, and thereafter semi-annually on April 1 and October 1 of each year. The principal of and interest on all Bonds shall be payable at the principal office of the Trustee in the City of Miami, State of Oklahoma, or, at the option of the holder, at the office or agency of the Authority in the Borough of Manhattan, in the City and State of New York, in such coin or currency as may be, on the respective dates of the payment thereof, legal tender for the payment of public and private debts.

Section 2.03. The Bonds issued hereunder (except temporary bonds issued in accordance with the provisions of Section 2.09 hereof) shall be in the denomination of \$1000 each and shall be fully engraved.

All Bonds to be issued hereunder shall be signed on behalf of the Authority by its Chairman or Vice-Chairman and the corporate seal of the Authority shall be thereto affixed and attested by the Secretary or an Assistant Secretary of the Authority. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer or officers of the Authority before the Bonds so signed and sealed shall have been actually authenticated and delivered by the Trustee, such Bonds may, nevertheless, upon the request of the Authority, be authenticated and delivered, as herein provided, and may be issued as though the persons who signed or sealed such Bonds had not ceased to be such officers of the Authority, and also any Bond may be signed and sealed on behalf of [fol. 39] the Authority by such persons as at the actual time of the execution of such Bond shall be the proper officers of the Authority, although at the date of such Bond such persons may not have been officers of the Authority.

The coupons to be attached to the Bonds shall be authenticated by the facsimile signature of the present or any future Treasurer of the Authority, and the Authority may adopt and use for that purpose the facsimile signature of any person who shall have been such Treasurer of the Au-

thority at any time on or after April 1, 1938, notwithstanding that he may have ceased to be such Treasurer at the time when such Bonds shall be actually authenticated and delivered.

Section 2.04. No Bond shall be authenticated by the Trustee hereunder unless the same shall bear a certificate of registration of the State Auditor of the State of Oklahoma, and a certificate of the Attorney General of the State of Oklahoma approving said Bond, as required by the Act. Such certificates shall be substantially of the tenor and purport above recited, or as said State Auditor or Attorney General, as the case may be, may prescribe.

Section 2.05. Only such Bonds as shall be authenticated by a certificate of the Trustee as aforesaid shall be valid or obligatory for any purpose or shall be entitled to any benefit hereunder, and every such certificate of the Trustee on any Bond executed on behalf of the Authority shall be conclusive evidence and the only evidence requisite against the Authority that the Bond so authenticated has been duly issued hereunder and that the holder thereof is entitled to the benefit of this Indenture. No holder of any Bond issued hereunder which shall be so authenticated shall be under any duty to ascertain whether the same shall have been duly issued, authenticated and delivered according to the provisions hereof. Prior to the authentication of Bonds hereunder, all matured interest coupons, if any, attached thereto shall be by the Trustee detached and cancelled.

Section 2.06. The Authority covenants that it will, while any of the Bonds issued hereunder shall remain outstanding and unpaid, keep at the office of the Trustee, in the City of [fol. 40] Miami, Oklahoma, books for the registration (as to principal) and transfer of Bonds as herein provided, and the Trustee is hereby appointed the agent of the Authority for the registration and transfer of Bonds.

For any such transfer or registration of a Bond the Authority may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge that may be imposed thereon.

Section 2.07. The Bonds shall pass by delivery unless registered as to principal otherwise than to bearer on the said books of registration. Any Bond may be registered



on the books of the Authority at the office of the Trustee in the City of Miami, State of Oklahoma, as to principal only, upon presentation thereof at said office, and such registration shall be noted on such Bond. After such registration of any Bond no transfer thereof shall be valid unless made on said books by the registered holder in person or by his attorney duly authorized in writing and similarly noted on the Bond, but such Bond may be discharged from registration by being in like manner transferred to bearer and thereupon transferability by delivery shall be restored, but such Bond may again and from time to time be registered or transferred to bearer as before. Registration of any Bond as to principal, however, shall not affect the negotiability of the coupons appertaining to such Bond, but every such coupon shall continue to pass by delivery merely and shall remain payable to bearer. As to each Bond so registered as to principal, the person in whose name the same shall for the time being be registered shall for all purposes of this Indenture be deemed and regarded as the absolute owner and so long as the same shall be so registered payment of or on account of the principal thereof shall be made only to the registered holder thereof. All such payments so made shall be valid and effectual to release and discharge liability for the principal of such Bond to the extent of the sum or sums so paid. The bearer of any Bond issued hereunder, which shall not be registered as to principal (otherwise than to bearer) as hereinabove provided, and the bearer of any coupons appertaining to any Bond, whether such Bond shall be registered or not, shall for all purposes of this Indenture be deemed [fol. 41] and regarded as the absolute owner of such Bond or coupon, as the case may be, for the purpose of receiving payment thereof, and for all other purposes, and the Authority, the Trustee and any paying agent shall be fully protected in making payment of any such Bond or coupon to the bearer thereof.

Section 2.08. The Bonds shall have all the qualities of negotiable instruments under the law merchant. Each and every successive holder of any Bond issued hereunder, during such time or times as it shall be payable to bearer, and of each of the interest coupons thereto appertaining, is conclusively presumed to forego and renounce his equities in favor of subsequent holders for value without notice,

and to agree that such Bond, while so payable to bearer, and each of the coupons thereto appertaining, may be negotiated by delivery by any person having possession thereof, howsoever such possession may have been acquired and that any holder who shall have taken such Bond or any of the said coupons from any person for value and without notice shall thereby acquire absolute title thereto, free from any defenses enforceable against any prior holder and free from all equities and claims of ownership of any such prior holder.

Section 2.09. Until the definitive Bonds to be issued under this Indenture can be prepared and executed, the Authority may execute and the Trustee shall authenticate and deliver in lieu of such definitive Bonds, and subject to the same provisions, limitations and conditions, temporary typewritten, printed or lithographed Bonds, with or without coupons, in bearer form, substantially of the same tenor but with such appropriate omissions, insertions and variations as may be determined by the Board of Directors of the Authority and approved by the Trustee. Such temporary Bonds may be in the denomination of One Thousand Dollars (\$1,000) or any multiple thereof, as the Authority may determine. When and as interest is paid on temporary Bonds without coupons, such Bonds shall, unless at the time held by the Government, be presented to the Trustee for notation thereon of such payment. The Authority covenants that definitive Bonds will, without unnecessary delay, be prepared and executed by and on behalf of the Authority and delivered to the Trustee and thereupon the Trustee shall authenticate and deliver such definitive Bonds in exchange for an equal aggregate principal amount of such temporary Bonds and of like maturities, when surrendered for exchange. Such exchange shall be at the expense of the Authority and without its making any charge therefor. Until so exchanged such temporary Bonds shall be entitled to the same security and rights as definitive Bonds.

The holder of any temporary Bond or Bonds may, at his option, surrender the same to the Trustee for exchange for another temporary Bond or Bonds of like aggregate principal amount and maturity, and thereupon the Authority shall execute and the Trustee shall authenticate, and, in exchange for the temporary Bond or Bonds so surrendered,

and without charge for such exchange, shall deliver a like aggregate principal amount of temporary Bond or Bonds of the same maturity, in any denomination or denominations provided for in this Indenture and requested by such holder. Such temporary Bond or Bonds surrendered in exchange either for another temporary Bond or Bonds or for a definitive Bond or Bonds, shall be forthwith cancelled by the Trustee and held for the account of the Authority.

Section 2.10. Whenever

(a) pursuant to Section 2.05 hereof matured interest coupons are detached by the Trustee; or

(b) pursuant to section 2.09 hereof temporary Bonds or coupons shall be surrendered for exchange or substitution; or

(c) pursuant to any provision of this Indenture Bonds or coupons are surrendered and paid, whether upon purchase, call for redemption at maturity or otherwise, the Trustee shall cancel such Bonds or coupons so received and either deliver the same to or upon the written order of the Treasurer of the Authority, or, upon the written order of such Treasurer, incinerate such Bonds or coupons and issue to the Treasurer of the Authority a certificate of the fact of such incineration, and each such certificate shall be accepted by the Trustee and its successors in trust hereunder [fol. 43] as conclusive evidence of the payment or cancellation of the Bonds or coupons therein stated to have been incinerated, for all purposes of this Indenture or any release hereof to the same extent as the presentation duly cancelled of the Bonds or coupons so mentioned in such certificate. When Bonds or coupons are received by the Trustee under the circumstances set forth in subparagraphs (a) and (c) of this Section, no Bonds or coupons shall be issued in lieu thereof.

### ARTICLE III

#### Issue of Bonds

Section 3.01. Prior to the authentication and delivery by the Trustee of any Bonds hereunder, the Authority shall file with the Trustee a copy of resolutions of the Board of Directors of the Authority certified by the Secretary of the Authority to have been duly and regularly adopted, authorizing and directing the execution, acknowledgment and delivery of this Indenture, and the execution, issuance and

authentication of Bonds hereunder in accordance with the terms hereof.

Section 3.02. Bonds of this issue, in the aggregate principal amount of \$11,563,000, maturing in years and amounts as follows:

Year	Amount
1943	\$63,000
1944 to 1947, inclusive	100,000
1948 to 1951, inclusive	200,000
1952 to 1956, inclusive	300,000
1957 to 1961, inclusive	400,000
1962 to 1966, inclusive	500,000
1967 to 1972, inclusive	600,000
1973	700,000

(herein called "Project Bonds") shall at one time or from time to time be executed by and on behalf of the Authority and delivered to the Trustee, and, in accordance with written orders of the Authority signed by its Chairman or Vice-Chairman and Treasurer, shall be authenticated by the Trustee and delivered (whether before or after filing or recording of this Indenture in any public office) from time [fol. 44] to time for original issue hereunder, but only upon receipt of a certificate of the Authority signed by its Chairman or Vice-Chairman and its Treasurer stating that the Authority has received, or upon delivery of the Bonds to or upon the order of the Authority will receive, an amount in cash equal to the principal amount of the Bonds to be delivered and accrued interest thereon to the date of delivery, the proceeds of said Bonds to be used for the payment of the Construction Cost of the Project.

Section 3.03. Bonds of this issue, in addition to the Project Bonds to be issued as provided in Section 3.02, and also including (after the Completion Date of the Project) any of said Project Bonds not used for the construction of the Project, may be issued from time to time by the Authority for the purpose of defraying the Cost of Construction of Improvements of the Project or of the System, but only in accordance with the provisions of this Section.

Upon receipt by the Trustee of

(a) A requisition, signed by the Treasurer of the Authority, specifying the total principal amount and the maturities



of the Bonds proposed to be issued to pay the Cost of Construction of the proposed Improvements, and stating the sources of any monies in addition to the proceeds of such Bonds necessary to pay the total Cost of Construction of said Improvements;

(b) A certificate of the Authority, executed by its General Manager and its Treasurer, and approved by an Engineer, stating in detail the Improvements to be financed by the additional Bonds proposed to be issued, and stating that such Improvements are desirable for the proper and beneficial operation of the System and will be a part thereof, and that the estimated net Revenues of the Authority after such Improvements shall have been made will (in their opinion) be sufficient to pay the principal of and interest on all Bonds, including the Bonds proposed to be issued, as the same become due and payable, and to meet all other obligations of the Authority under the Indenture;

(c) Complete plans and specifications (herein called [fol. 45] "Improvement Plans") for such Improvements, together with detailed estimates of the Cost of Construction of such Improvements, all approved in writing by an Engineer;

(d) Copies, duly certified by the Secretary of the Authority, of binding contracts or commitments to purchase (at not less than the principal amount thereof and accrued interest to the date of delivery) Bonds, or otherwise to furnish funds, in an amount at least sufficient to pay the Cost of Construction of said Improvements;

(e) An agreement, executed by the Chairman or Vice-Chairman and Treasurer of the Authority, agreeing to deposit as and when received, with the Trustee, to be held by it in the Construction Fund for construction of said Improvements, any amount necessary, in addition to the proceeds of the Bonds to be sold; to pay the entire Cost of Construction of such Improvements, as set forth in the foregoing estimates;

(f) A copy, duly certified by the Secretary of the Authority, of a resolution of the Board of Directors of the Authority, approving the foregoing contracts, authorizing the construction or acquisition of such Improvements, and also authorizing the issuance and sale of such additional Bonds,

and the application of the proceeds thereof, and the additional amounts referred to in subsection (e) of this Section, to the Cost of Construction of said Improvements; and

(g) An opinion of counsel (who may be counsel for the Authority) satisfactory to the Trustee, to the effect that the Revenues from said Improvements have been duly pledged to the Trustee hereunder as security for all of the Bonds, together with such instruments of conveyance or assignment as may be specified in such opinion of counsel to be necessary so to pledge such Revenues;

the Trustee shall from time to time in accordance with the written orders of the District signed by its Chairman or Vice-Chairman and Treasurer and upon receipt by the Trustee (for deposit in the Construction Fund) of an amount [fol. 46] of cash not less than the principal amount of the Bonds delivered plus accrued interest thereon to the date of delivery, authenticate and deliver Bonds in an aggregate amount not exceeding the principal amount of Bonds specified in the foregoing requisition; provided, however, that the maturities of the Bonds to be issued in accordance with any such written order shall be such that the maturities of all the Bonds (other than Project Bonds) issued in accordance with the provisions of this Section 3.03 (including the Bonds specified in such written order) shall be substantially proportionate to the maturities of all of the \$937,000 principal amount of such Bonds so issuable, and provided further, that if not all of the Project Bonds shall have been issued to pay the Cost of Construction of the Project, then, the Certificate of Project Completion having been filed with the Trustee, all such Bonds not issued (or to be issued) to pay the Cost of Construction of the Project shall be issued before any of the aforesaid \$937,000 principal amount of Bonds shall be issued. All proceeds of Bonds issued pursuant to any requisition (and any additional monies to be used as hereinabove provided) shall be held and disbursed for the Cost of Construction of the Improvements specified in the certificate accompanying such requisition, all in accordance with the provisions of Article IV hereof.

Section 3.04. The Authority covenants that no Bonds will be issued pursuant to the provisions of Section 3.03 unless:

(a) Such Bonds shall be for the purpose of providing funds to pay the Cost of Construction of Improvements

which are desirable for the proper and beneficial operation of the System and will be a part thereof; and

(b) Such Bonds shall be sold at not less than the principal amount thereof and accrued interest to the date of delivery; and

(c) The Authority shall have available (either on hand or under binding contracts or commitments) any amounts necessary, in addition to the proceeds of such Bonds, to pay the entire Cost of Construction of the aforesaid Improvements, according to detailed estimates of such Cost of Construction approved by an Engineer; and

[fol. 47] (d) The estimated Revenues of the Authority after the construction of such Improvements will be sufficient to pay the principal of and interest on all outstanding Bonds, including the Bonds then proposed to be issued, as the same become due and payable, and to meet all other obligations of the Authority under the Indenture; and

(e) The construction of such Improvements, the issuance and sale of such Bonds, and the application to the Cost of Construction of such Improvement of the proceeds of such Bonds, and of such additional amounts as may be necessary to pay such Cost of Construction, shall have been duly approved by the Board of Directors of the Authority; and

(f) The Revenues from such Improvements shall have been duly pledged to the Trustee hereunder as security for all of the Bonds.

The Trustee, however, shall be under no obligation with reference to the requirements of this section, but may rely upon the documents to be delivered to it pursuant to Section 3.03 hereof as full authority for authentication of Bonds in accordance with the provisions of said Section.

#### ARTICLE IV

##### Application of Bond Proceeds; Construction Fund

Section 4.01. Pursuant to the Loan Agreement the Authority is to deliver to the Government plans and specifications for the Project and said plans and specifications are to be accepted by the Government as provided in the Loan Agreement. Said plans and specifications, including any

modifications thereof similarly filed with and accepted by the Government, are herein called the "Plans and Specifications."

Section 4.02. The Loan Agreement provides that the proceeds from the sale of the Bonds therein referred to (exclusive of accrued interest) will be deposited in a separate account or accounts in a bank or banks which are members of the Federal Deposit Insurance Corporation. The Trustee is hereby designated as such depository, and the Authority covenants that it will, promptly upon receipt of the [fol. 48] same, deposit with the Trustee the proceeds of the Bonds issued pursuant to Section 3.02 hereof for the construction of the Project, and will also deposit with the Trustee the proceeds of all Bonds issued pursuant to Section 3.03 hereof to pay the Construction Cost of Improvements. All cash so received by the Trustee (other than accrued interest to be deposited in the Sinking Fund pursuant to Section 6.01 hereof) and any additional cash received by the Trustee for such purpose shall constitute a special fund to be known as the "Construction Fund" and shall be held in trust by the Trustee for the payment of Construction Costs of the Project or Improvements, as the case may be, and for the further security of the Bonds, and shall be disbursed or applied by the Authority or the Trustee as hereinafter in this Article provided.

The Trustee is authorized to accept any cash, in addition to the cash to be received under the preceding paragraph of this Section, which the Authority or the Government may at any time pay over or cause to be paid over to the Trustee for credit to the Construction Fund; provided that no Bonds shall be authenticated against the receipt of such additional cash.

Any monies received by the Authority (and paid to the Trustee pursuant hereto) for the construction of the Project, including the proceeds of the Bonds issued pursuant to Section 3.02 hereof and also including any monies received (for such purpose) by the Authority by way of grant pursuant to the Loan Agreement for the construction of the Project, shall be segregated on the books of the Trustee (from other monies in the Construction Fund) so that the amount of such monies spent and available for the Project may at all times be conveniently determined. Similarly any monies received for the construction of Improve-



ments, including the proceeds of any Bonds issued pursuant to Section 3.03 hereof, shall be segregated (according to the particular Improvement to which such monies shall be applicable) on the books of the Trustee so that the amount thereof spent and available for the construction of any specified Improvement may at all times be conveniently determined.

The Trustee agrees that it will pledge and at all times keep pledged with the Authority, as security for the cash held by the Trustee in the Construction Fund, securities, [fol. 49] in bearer form or accompanied by proper instruments of transfer, constituting direct obligations of, or unconditionally guaranteed as to principal and interest by, the United States of America, having an aggregate market value, exclusive of accrued interest thereon, at least equal to the monies in the Construction Fund, provided that with the consent of the Authority such pledged securities may be deposited with the Federal Reserve Bank of Kansas City or the Oklahoma City branch thereof, or any other bank or trust company satisfactory to the Government, and a trust receipt or trust receipts therefor delivered to the Authority. The Authority covenants and agrees that no funds will be allowed to be or remain deposited in the Construction Fund unless secured as above provided.

Section 4.03. The monies in the Construction Fund shall be used for the payment or reimbursement of the Construction Cost of the Project or of the particular Improvements for which such monies shall have been received. For the purposes of this Indenture, the Construction Cost (of the Project or of Improvements) shall be deemed to include the following items, without intending thereby to limit or restrict (except as expressly provided) any proper definition of such cost:

(a) The cost of acquisition of all water, water rights, reservoir and plant sites, and other necessary lands, or options therefor, and the cost of the relocation or removal of highways, schools, railroads, and other structures.

(b) The cost of acquisition of any canal or transmission line rights of way, easements, licenses or privileges, or options therefor.

(c) Interest accruing upon the Bonds, issued to pay the Cost of Construction of the Project or any part thereof,

until the April 1 or October 1 next succeeding the Completion Date of the Project, but not later than April 1, 1940, but not any interest on Bonds issued to pay the Cost of Construction of Improvements.

(d) All reasonable fees and expenses of the Trustee until the Completion Date of the Project.

[fol. 50] (e) The cost (if any) to the Authority of insurance and bonds (other than contractors' bonds) prior to the Completion Date (of the Project or of the appropriate Improvements, as the case may be) in connection with the Project or Improvements, as the case may be.

(f) Fees and expenses of engineers for surveys, preparation of plans and specifications and supervising construction, as well as for the full performance of all other duties of engineers necessary in relation to the Project or Improvements, as the case may be, including the fees and expenses (if any) of the Project Engineer (P. W. A.) and the Project Auditor (P. W. A.), if any, and their assistants.

(g) Actual expenses of administration of construction, telegraph and telephone expenses, office expenses, fees and expenses of legal counsel, and all other costs or expenditures not herein specified, incident to the construction of the Project or Improvements, as the case may be, and to the acquisition of real estate, easements and water rights, and options thereon, including without being limited thereto, abstracts of title, title insurance, the preparation, issuance and printing, lithographing or engraving of the Bonds, the preparation and printing of this Indenture and the Loan Agreement and the various deeds, agreements and other instruments in connection with the Project or Improvements, as the case may be, and the fees and taxes for the recordation or filing of said instruments and taxes, if any, payable on the issuance of the Bonds.

(h) All taxes, assessments or other governmental charges, levied, assessed or payable prior to the Completion Date of the Project upon or in respect of the System or any part thereof.

(i) All amounts due to contractors under construction contracts in connection with the Project or Improvements, as the case may be.

(j) All amounts for labor, materials and equipment in connection with the Project or Improvements, as the case may be, not included in construction contracts.

[fo]. 51] (k) All fees and expenses incurred by the Authority prior to the Completion Date of the Project in complying with the provisions of the Loan Agreement and any and all fees and expenses payable or reimbursable to the Government under the provisions of the Loan Agreement.

(l) Expenses of operation and maintenance of the System during a reasonable seasoning period not exceeding three months after the Completion Date of the Project, including reasonable claims for damages from breaks, overflow or seepage occurring before the Completion Date of the Project or during such seasoning period.

(m) Working capital in an aggregate amount not to exceed \$100,000.

(n) All other expenditures which may be approved by the Administrator.

Section 4.04. So long as no default shall, to the knowledge of the Trustee, exist in respect of the covenants or provisions of this Indenture, the Trustee shall, upon each interest payment date, until receipt by it of the Certificate of Project Completion, but not later than April 1, 1940, withdraw from the Construction Fund out of any monies available in such Fund on such interest payment date the amount of interest then becoming payable on the Bonds (and not payable out of accrued interest deposited in the Sinking Fund) or any thereof and apply the same to the payment of such interest.

Section 4.05. The Trustee, after paying or making provision for the payment of the interest on the Bonds in accordance with the provisions of Section 4.04, shall from time to time pay out or permit the withdrawal of monies in the Construction Fund for the payment or reimbursement of other Construction Costs of the Project, such payment or withdrawal to be made to or upon the order of the Authority, but only in accordance with the provisions of this Section. Upon receipt by the Trustee of a certificate from the Project Engineer (P. W. A.) stating that he has received and approved the following documents:

(a) A written requisition of the District signed by its General Manager and its Treasurer,

[fol. 52] (1) setting forth the amount of cash to be withdrawn, stating that such amount is then due, or about to become due, and unpaid, specifying the purposes for which such indebtedness was incurred and the person or persons to whom it is owed and the amount owed to each of them, respectively, and approving the amounts and purposes of all such payments;

(2) stating that all of such purposes are included within the purposes for which such cash may be withdrawn from the Construction Fund under the provisions of this Article, and that no part of the indebtedness therein mentioned has been included in any previous or other requisition furnished hereunder (other than items cancelled or eliminated by the Project Engineer (P. W. A.) or by the Authority) or made the basis of any previous payment of cash by the Trustee, and that no part thereof has been paid out of the proceeds of any insurance;

(3) stating that all cash, if any, theretofore withdrawn from the Construction Fund pursuant to the provisions of this Section has been duly applied to the payment of the Cost of Construction of the Project in accordance with the requisition or requisitions therefor, and that all indebtedness theretofore incurred on account of the construction of the Project and for the full payment of which cash has been theretofore withdrawn from the Construction Fund, has been fully paid;

(4) stating that no default exists to the knowledge of the signers in respect of any of the covenants, agreements or provisions of this Indenture;

(5) stating that neither the Authority nor any of its officers, directors or employees has received or will receive any discount, rebate, commission, fee, proceeds from insurance or other abatement in connection with the expenditure or indebtedness described in said requisition; and

[fol. 53] (6) stating that the requisition covers no item representing payment or reimbursement on account of any retained percentages which the Authority is entitled to retain;

(b) A certificate of an Engineer satisfactory to the Project Engineer (P. W. A.) and to the Trustee,



(1) setting forth in detail the amounts and purposes of the disbursements in the aforesaid requisition and approving all such disbursements as being necessary in the proper construction of the Project and reasonable in amount;

(2) stating that the amounts of any such disbursements out of monies received from the Government pursuant to the Loan Agreement and the purposes for which such disbursements are to be made have been included in a certificate or certificates of purposes previously delivered to and accepted by the Government pursuant to the Loan Agreement;

(3) stating that all property any of the cost of which is included in the aforesaid requisition has been acquired, furnished or constructed in accordance with the Plans and Specifications; and

(4) stating that all construction work described in the requisition (and for which payment is to be made) has been done or performed in compliance with the Plans and Specifications and upon land to which the Authority, in the opinion of counsel (then or theretofore furnished to the Authority), has good and marketable title, free of all liens and encumbrances, in fee simple, or, in the case of flowage rights, rights of way for transmission lines and like uses, a perpetual easement sufficient in extent to enable the Authority to use such property for the purposes intended, and owned by the Authority without the necessity of any further payment for or on account thereof; and

(5) stating that the amount remaining in the Construction Fund after such withdrawal and available for the Cost of Construction of the Project, plus the aggregate principal [fol. 54] amount of the Project Bonds remaining unissued hereunder, plus the amount remaining to be paid in cash to the Authority by way of grant pursuant to the Loan Agreement, will be sufficient to pay the entire Cost of Construction of the Project in accordance with the Plans and Specifications, including interest on the Bonds during such construction;

(c) An opinion of counsel (who may be counsel for the Authority) satisfactory to the Trustee to the effect that

(1) the Authority has good and marketable title to all property, real or personal, theretofore constructed or acquired by means of cash withdrawn from the Construction

Fund pursuant to the provisions of this Section 4.05, and to all property upon which, according to the certificate referred to in subdivision (b) of this Section 4.05, and particularly the portion thereof responsive to subparagraph (4) of said subdivision (b), any construction work described in said requisition has been done or performed, free of all liens, charges and encumbrances, except the liens, charges or encumbrances on rights-of-way referred to in opinions of counsel previously delivered pursuant to subdivision (4) of this subsection (c);

(2) the Authority is entitled under the provisions of this Indenture and of the Loan Agreement, to the withdrawal of such cash as requested;

and, if any such cash is to be used for the acquisition of any real property, or interest therein (other than options therefor), or water rights or equipment, in addition, the opinion of such counsel to the effect that

(3) (i) the Authority has or will have upon receipt of the instruments of conveyance or assignment mentioned in such opinion (which instruments will be delivered immediately upon application of the cash withdrawal whereof is then requested), or without any such instruments, if the [fol. 55] opinion shall so state, good and marketable title to all such property (or interests therein) or rights, free of all liens, charges and encumbrances, (ii) all such real property, or interests therein, and water rights are or will be sufficient for the purposes for which the same have been or are to be acquired, and (iii) such rights in land, water rights and flowage rights will survive in perpetuity, all without the necessity of any further payment for or on account thereof;

provided, however, that in the event that such opinion of counsel shall certify with respect to any right-of-way for transmission lines, for the acquisition of which any such cash is to be used, that such right-of-way cannot be acquired free of all liens, charges and encumbrances, without excessive expense disproportionate to the value of such right-of-way, then (as to such right-of-way) in lieu of the opinion referred to in subdivision (3) of this subsection (c), the opinion of such counsel, setting forth in reasonable detail the liens, charges or encumbrances subject to which such right-of-way is to be taken and stating that

(4) (i) the Authority has or will have upon receipt of the instruments of conveyance or assignment mentioned in such opinion (which instruments will be delivered immediately upon application of the cash withdrawal of which is then requested), or without any such instruments if the opinion shall so state, title to such right of way, subject only to the liens, charges or encumbrances set forth in such opinion, and (ii) such liens, charges or other encumbrances upon such right of way do not interfere with the use by the Authority of such right of way and do not require the payment of any charge or other cost by the Authority for the use of such right of way, and (iii) the Authority has the right to condemn the interest of the holder of any such lien, charge or other encumbrance without enhancement in the amount of compensation to be paid therefor by reason of any improvements erected by the Authority on such right of way and (iv) discharge of such liens, charges and encumbrances (which may be by con-[fol. 56] demnation or agreement) can be obtained by the Authority at reasonable cost, and (v) all such rights of way are or will be sufficient for the purpose for which the same have been or are to be acquired, and will survive in perpetuity, all without the necessity of any further payment for or on account thereof, except to procure releases as aforesaid from the liens, charges or encumbrances mentioned in said opinion;

and setting forth the persons to whom payment should be made and the amounts payable to such persons, the Trustee shall be authorized to transfer from time to time amounts not exceeding in the aggregate the amount specified in such certificate to its commercial department for the payment of the items specified in such certificate, such transfer to be made only upon receipt by such commercial department of an appropriate check or other order, for the payment, in accordance with such certificate, of the amount so transferred.

The purpose of the requirement of the certificate of the Project Engineer (P. W. A.) for payments from the Construction Fund for Costs of Construction of the Project is hereby declared to be to furnish assurance that the expenditures are made in accordance with the Plans and Specifications, and for purposes permitted by this Indenture and the Loan Agreement, and are reasonable in amount for such

purposes, and the Project Engineer (P. W. A.) shall be guided by such considerations in his approval or disapproval of any payment or withdrawal or of the aforesaid documents. In no event shall the Authority make or the Project Engineer (P. W. A.) approve the disbursement of any funds derived from Bonds sold to or of any grant made by the Government for purposes other than those stated in the certificate or certificates of purposes accompanying the requisitions for the purchase of such Bonds or payment of such grant previously submitted and accepted by the Government pursuant to the Loan Agreement or amendments of such certificates.

[fol. 57] The Project Engineer (P. W. A.) shall deliver to the Trustee all documents delivered to him in connection with any payments from the Construction Fund pursuant to the provisions of this Section, but the Trustee shall be under no obligation to require such delivery; nor shall the Trustee be under any obligation with reference to any such documents, but shall be authorized to rely conclusively upon the foregoing certificate of the Project Engineer (P. W. A.) in paying or permitting the withdrawal of monies from the Construction Fund pursuant to the provisions of this Section.

Section 4.06. Out of the monies in the Construction Fund, available for the construction of any Improvements, the Trustee shall from time to time pay out or permit the withdrawal of all or any of such monies, such payment or withdrawal to be made to or upon the order of the Authority, for the payment or reimbursement of Construction Costs of such Improvements, but only in accordance with the provisions of this Section. Upon receipt by the Trustee of

(a) A written requisition of the District signed by its General Manager and its Treasurer,

(1) setting forth the amount of cash to be withdrawn, stating that such amount is then due, or about to become due, and unpaid, specifying the purposes for which such indebtedness was incurred and the person or persons to whom it is owed and the amount owed to each of them, respectively, and approving the amounts and purposes to all such payments;

(2) stating that all of such purposes are included within the purposes for which such cash may be withdrawn from



the Construction Fund under the provisions of this Article, and that no part of the indebtedness therein mentioned has been included in any previous or other requisition furnished hereunder (other than items cancelled or eliminated by the Trustee or the Authority) or made the basis of any previous payment of cash by the Trustee, and that no part thereof [fol. 58] has been paid out of the proceeds of any insurance;

(3) stating that all cash, if any, theretofore withdrawn from the Construction Fund has been duly applied to the payment of the Cost of Construction of the appropriate Improvements in accordance with the requisition or requisitions therefor, and that all indebtedness theretofore incurred on account of the construction of such Improvements and for the full payment of which cash has been theretofore withdrawn from the Construction Fund, has been fully paid;

(4) stating that no default exists to the knowledge of the signers in respect of any of the covenants, agreements or provisions of this Indenture;

(5) stating that neither the Authority nor any of its officers, directors, or employees has received or will receive any discount, rebate, commission, fee, proceeds from insurance or other abatement in connection with the expenditure or indebtedness described in said requisition; and

(6) stating that the requisition covers no item representing payment or reimbursement on account of any retained percentages which the Authority is entitled to retain;

(b) A certificate of an Engineer,

(1) setting forth in detail the amounts and purposes of the disbursements in the aforesaid requisition and approving all such disbursements as being necessary in the proper construction of the appropriate Improvements and reasonable in amount;

(2) stating that all property any of the cost of which is included in the aforesaid requisition has been acquired, furnished or constructed in accordance with the appropriate Improvement Plans; and

(3) stating that all construction work described in the requisition (and for which payment is to be made) has been [fol. 59] done or performed in compliance with the appro-

priate Improvement Plans, and upon land to which the Authority, in the opinion of counsel (then or theretofore furnished to the Authority), has good and marketable title, free of all liens and encumbrances, in fee simple, or, in the case of flowage rights, rights of way for transmission lines and like uses, a perpetual easement sufficient in extent to enable the Authority to use such property for the purposes intended, and owned by the Authority without the necessity of any further payment for or on account thereof; and

(4) stating that the amount remaining in the Construction Fund (and available for the Construction Costs of such Improvements) after such withdrawal, plus any other monies available under binding contracts or commitments for the construction of such Improvements, will be sufficient to pay the entire Cost of Construction of such Improvements in accordance with the Improvement Plans therefor;

(c) An opinion of counsel (who may be counsel for the Authority) satisfactory to the Trustee to the effect that

(1) the Authority has good and marketable title to all property, real or personal, theretofore constructed or acquired by means of cash withdrawn from the Construction Fund, and to all property upon which, according to the certificate referred to in subdivision (b) of this Section 4.06; and particularly the portion thereof responsive to subparagraph (3) of said subdivision (b), any construction work described in said requisition has been done or performed, free of all liens, charges and encumbrances, except the liens, charges or encumbrances on rights-of-way referred to in opinions of counsel previously delivered pursuant to subdivision (4) of this subsection (c);

(2) The Authority is entitled under the provisions of this Indenture to the withdrawal of such cash as requested;

[fol. 60] and, if any such cash is to be used for the acquisition of any real property, or interest therein (other than options therefor), or water rights or equipment, in addition, the opinion of such counsel to the effect that:

(3) (i) the Authority has or will have upon receipt of the instruments of conveyance or assignment mentioned in such opinion (which instruments will be delivered immediately upon application of the cash withdrawal whereof is then requested), or without any such instruments, if the opinion shall so state, good and marketable title to all such

property (or interests therein) or rights, free of all liens, charges and encumbrances, (ii) all such real property, or interests therein, and water rights are or will be sufficient for the purposes for which the same have been or are to be acquired, and (iii) such rights in land, water rights and flowage rights will survive in perpetuity, all without the necessity of any further payment for or on account thereof;

provided, however, that in the event that such opinion of counsel shall certify with respect to any right-of-way for transmission lines, for the acquisition of which any such cash is to be used, that such right of way cannot be acquired free of all liens, charges and encumbrances, without excessive expense disproportionate to the value of such right of way, then (as to such right of way), in lieu of the opinion referred to in subdivision (3) of this subsection (c), the opinion of such counsel, setting forth in reasonable detail the liens, charges or encumbrances subject to which such right-of-way is to be taken and stating that

(4) (i) the Authority has or will have upon receipt of the instruments of conveyance or assignment mentioned in such opinion (which instruments will be delivered immediately upon application of the cash withdrawal of which is then requested), or without any such instruments if the opinion shall so state, title to such right of way, subject only to the liens, charges or encumbrances set forth in such opinion, [fol. 61] and (ii) such liens, charges or other encumbrances upon such right of way do not interfere with the use by the Authority of such right of way and do not require the payment of any charge or other cost by the Authority for the use of such right of way, and (iii) the Authority has the right to condemn the interest of the holder of any such lien, charge or other encumbrance without enhancement in the amount of compensation to be paid therefor by reason of any improvements erected by the Authority on such right of way, and (iv) discharge of such liens, charges and encumbrances (which may be by condemnation or agreement) can be obtained by the Authority at reasonable cost, and (v) all such rights of way are or will be sufficient for the purposes for which the same have been or are to be acquired, and will survive in perpetuity, all without the necessity of any further payment for or on account thereof, except to procure releases as aforesaid from the liens, charges or encumbrances mentioned in said opinion;

the Trustee shall be authorized to transfer from time to time amounts not exceeding in the aggregate the amount specified in such requisition to its commercial department for the payment of the items specified in such requisition, such transfer to be made only upon receipt by such commercial department of an appropriate check or other order for the payment, in accordance with the requisition, of the amount so transferred.

Section 4.07. Upon completion of the construction of the Project, and in any event within 30 days after such completion, the Authority will deliver to the Government, and to the Trustee, original counterparts of

(a) A certificate (herein called the "Certificate of Project Completion") signed by the General Manager and the Treasurer of the Authority, having endorsed thereon the approval of the Project Engineer (P. W. A.), which certificate (i) shall certify that the Project has been fully constructed and completed in accordance with the Plans and Specifications and that the same has been fully paid for or [fol. 62] that funds sufficient (with the aggregate principal amount of Project Bonds then remaining unissued hereunder, plus the amount remaining to be paid in cash to the Authority by way of grant pursuant to the Loan Agreement for the construction of the Project) so to pay for the same (and available for such payment) remain in the Construction Fund, (ii) shall set forth the date on which the Project was completed and in reasonable detail the total Cost of Construction thereof, the total cost of labor and materials incorporated therein and the balance of the Construction Costs remaining unpaid (including working capital), and (iii) shall describe with particularity the property of all kinds, including water rights, acquired or constructed by or for the Authority with funds made available; directly or indirectly, under the Loan Agreement; and

(b) An opinion of counsel (who may be counsel for the Authority) satisfactory to the Trustee to the effect that the Project and all property, real, personal or mixed, connected therewith or forming a part thereof, including all water rights, are owned by the Authority free of all liens, charges and encumbrances except the liens, charges and encumbrances on rights-of-way referred to in opinions of counsel



delivered pursuant to subdivision (4) of subsection (c) of Section 4.05.

Upon completion of the construction of any Improvements (any portion of the cost of which shall be paid out of the Construction Fund), and in any event within 30 days after such completion, the Authority will furnish to the Trustee:

(a) A certificate (herein called the "Certificate of Completion of Improvements") signed by the General Manager or Chairman and the Treasurer of the Authority, having endorsed thereon the approval of an Engineer, certifying that such Improvements have been fully constructed and completed in accordance with the Improvement Plans therefor, and have been fully paid for or that funds sufficient (with any other monies available under binding contracts or commitments for the construction of such Improvements) so to pay for the same, and available for such payment, remain in the Construction Fund, setting forth the date on which such Improvements were completed, the total cost of labor and materials incorporated therein and the total Cost of Construction thereof; and

(b) An opinion of counsel (who may be counsel for the Authority) satisfactory to the Trustee, to the effect that such Improvements and all property, real, personal or mixed, forming a part thereof, are owned by the Authority free of all liens, charges and encumbrances except the liens, charges and encumbrances on rights-of-way referred to in opinions of counsel delivered pursuant to subdivision (4) of subsection (c) of the preceding Section.

The date of delivery to the Trustee of any Certificate of Completion (Project or Improvements, as the case may be) is herein called the Completion Date (of the Project or of such Improvements).

Upon receipt of the Certificate of Project Completion and opinion of counsel to accompany the same, the Trustee, after retaining in the Construction Fund (out of monies available for such purpose) a sum sufficient to meet all unpaid Costs of Construction of the Project, as set forth in the Certificate of Project Completion, including items then in controversy and any anticipated claims of the kind specified in subdivisions (a) and (b) of Section 4.03 hereof, shall deposit in the Sinking Fund, hereinafter provided for, any monies representing proceeds of Project Bonds issued pur-

suant to Section 3.02 hereof, or proceeds of the grant received from the Government pursuant to the Loan Agreement for the construction of the Project, then remaining or thereafter received for deposit in the Construction Fund. Any monies available for working capital, pursuant to subdivision (m) of Section 4.03 hereof, may be deposited in the Operating Fund, but expenditures therefrom shall not be reimbursed to said Fund. Similarly upon receipt of a Certificate of Completion of Improvements and the opinion of counsel to accompany the same, the Trustee, after retaining in the Construction Fund (out of monies available for such purpose) a sum sufficient to meet all unpaid Costs of Construction of the Improvements specified in such Certificate, including items then in controversy, shall deposit in the Sinking Fund any monies applicable to said Improvements then remaining or thereafter received for deposit in the Construction Fund. Whenever all Construction Costs for which monies shall have been set aside on any Completion Date as herein provided shall have been paid and any disputed items settled and paid out of the Construction Fund the Trustee shall deposit the balance in the Sinking Fund.

Section 4.08. The Authority covenants and agrees that it will promptly commence the construction of the Project and thereafter continue the same with all practicable dispatch, in an efficient and economical manner, at a reasonable cost, and in accordance with the Plans and Specifications and construction contracts approved in the manner required by the Loan Agreement, without any change or modification in any of the foregoing except as shall have been approved in writing by the Project Engineer (P.W.A.) and in conformity with all applicable laws, ordinances, rules and regulations of any governmental authorities having jurisdiction in the premises, and will complete such construction by July 1, 1939, unless an extension of the time for such completion shall be approved by the Project Engineer (P.W.A.) for causes beyond the control of the Authority.

The Authority further covenants and agrees that, in the event that it shall deliver to the Trustee Improvement Plans for any Improvements, it will promptly commence the construction of such Improvements and continue the same with all practicable dispatch, in an efficient and economical manner, at a reasonable cost, and in accordance with the Im-

provement Plans therefor, and in conformity with all applicable laws, ordinances, rules and regulations of any Governmental authorities having jurisdiction in the premises.

## ARTICLE V

### Revenue Fund and Application Thereof; Operating Fund

Section 5.01. All Revenues of the Authority, from whatever source derived, including any Revenues derived from the operation of the System after any part thereof shall have been put in operation (whether before or after the [fol. 65] Completion Date of the Project) shall be collected by the Authority and paid over as collected to the Trustee, and the Authority hereby covenants and agrees so to do. Such Revenues shall be held by the Trustee in a special fund to be known as the "Revenue Fund" and shall be disbursed or applied by the Trustee as hereinafter in this Article provided.

The accounting of the Revenues collected hereunder and the expenses of operation and maintenance paid through the Operating Fund hereinafter referred to, and the disposition of the balance of the Revenues through the Sinking Fund or otherwise as herein permitted, shall be in accordance with accepted accounting practices and a classification of accounts satisfactory to the Trustee.

Section 5.02. The Trustee shall from the first monies in the Revenue Fund pay to the Authority the sum of Twenty Thousand Dollars (\$20,000), which sum shall forthwith be deposited by the Authority in a bank or trust company satisfactory to the Trustee (and convenient to the Authority) in an account to be known as the "Grand River Dam Authority-Operating Fund" (herein called the "Operating Fund"). The monies from time to time in the Operating Fund shall be used by the Authority only for the purpose of paying the reasonable and proper costs of operation and maintenance of the System, and the Authority hereby covenants that it will use such monies for such purposes and no other. The reasonable and proper costs of operation and maintenance of the System shall include, but without limiting the generality of the foregoing, the following items:

- (a) Current premiums on insurance policies of every kind and nature;

(b) Taxes and assessments, if any, imposed upon the System or the property appurtenant thereto (the Revenues from which are pledged hereunder) or upon the Revenues thereof pledged hereunder;

(c) The cost of registering and/or qualifying the Bonds issued hereunder for sale under the laws of the United States or of any State or States;

[fol. 66] (d) Legal, administrative and other overhead expenses of the Authority;

(e) Costs, charges and expenses incident to the performance by the Authority of the Loan Agreement;

(f) Current charges and expenses of the Trustee hereunder; and

(g) Necessary and reasonable costs of operation, repairs, maintenance and upkeep of the System.

Section 5.03: The monies in the Operating Fund shall be disbursed by the Authority only by checks and vouchers (stating in reasonable detail the purpose of the payment) signed by the Treasurer of the Authority and countersigned by the General Manager.

On or before the tenth day of each month (and oftener if necessary) the Authority shall deliver to the Trustee and, so long as the Government shall hold not less than 20% of the outstanding Bonds, to the Administrator,

(a) A statement, verified by the Treasurer of the Authority, (i) showing the total amount of such disbursements and the checks and vouchers issued by the Authority against the Operating Fund during the preceding calendar month (or during the period covered by such statement), (ii) showing the distribution of the items of operating and maintenance expense so paid in accordance with the above mentioned classification of accounts, and (iii) stating that all payments so made have been made for the reasonable and proper costs of operation and maintenance of the System, are reasonable in amount and are properly payable from the Operating Fund in accordance with the provisions of this Article; and

(b) A copy of a resolution of the Board of Directors of the Authority, certified by the Secretary of the Authority



under its corporate seal to have been duly and regularly adopted, approving the disbursements specified in such verified statement and requesting the Trustee to reimburse the Authority therefor.

Within ten days after receipt by the Trustee of the foregoing documents, the Trustee shall pay over to or upon the [fol. 67] order of the Authority from the Revenue Fund (monies representing Revenues from prior months to be so applied before any Revenues from the current month shall be so applied) the amount of cash shown by said documents to have been properly disbursed by the Authority from funds in the Operating Funds transferred (for working capital) from the Construction Fund pursuant to Section 4.07 hereof (and not previously reimbursed to the Authority pursuant hereto); provided, however, that the Trustee may, if it shall have doubt as to the necessity or reasonableness of any items for which reimbursement is sought, and the Trustee shall, if the holders of not less than 10% of the Bonds then outstanding shall request such action, employ an Engineer (who shall not be in the employ of the Authority) or other qualified person satisfactory to the Trustee, to determine the necessity and reasonableness of any such items, and shall be authorized to rely upon the determination of such Engineer or other qualified person. In the event that the Trustee shall determine that any such item was unnecessary or unreasonable, reimbursement therefor shall not be entitled to priority over the payments to be made to the Sinking Fund pursuant to subdivisions (1), (2) and (3) of Section 5.04 hereof, but shall be made to the Authority only out of Revenues from prior months remaining in the Revenue Fund (and retained therein pursuant to subdivision (4) of said Section 5.04) after setting aside in the Sinking Fund the amounts to be set aside during the current month pursuant to subdivisions (1), (2) and (3) of said Section 5.04. The salary and expenses of any such Engineer or other qualified person shall be paid (or reimbursed to the Trustee) by the Authority out of the Operating Fund.

The Trustee may, but shall not be obligated to, rely upon the foregoing documents in making any payments out of the Revenue Fund, and shall not be liable for any payments made in accordance with the aforesaid documents.

It is the intention hereof that the amount from time to time in the Operating Fund (by reason of the successive reimbursements of items properly paid out of the Operating Fund herein provided for) and available for payment of costs of operation and maintenance shall be not less nor [fol. 68] substantially greater than the expenses of operation and ordinary maintenance for one month. \$20,000 is deemed to be ample for such purpose, but in the event that the average expenses of operation and ordinary maintenance per month shall be in excess of or less than \$20,000, the amount to be maintained in the Operating Fund may be increased or decreased, as the case may be, by agreement between the Authority and the Trustee, but no such agreement shall become effective until ten days after the execution thereof by the Trustee and shall not in any event become effective if, within such ten-day period, the Trustee shall have received a written notice from the holders of not less than 75% of the outstanding Bonds, disapproving the increase or decrease provided for therein.

The trustee is hereby authorized to execute any such agreement with the Authority and, in the event of an increase in the amount to be maintained, is authorized to pay to the Authority, for deposit in the Operating Fund in accordance with the provisions of Section 5.02 hereof, the amount by which the Operating Fund is so increased; and, in the event of a decrease in the amount so to be maintained, the amount payable to the Authority pursuant to the next succeeding request or requests for reimbursement shall be diminished by the amount of such decrease.

Section 5.04. After providing for the establishment and maintenance of the Operating Fund, and reimbursements thereto, in accordance with the provisions of Sections 5.02 and 5.03 hereof, the Trustee shall, on or before the 15th day of each calendar month, apply the monies remaining in the Revenue Fund as follows (monies representing Revenues from prior months to be so applied before any Revenues from the current month shall be so applied):-

(1) The Trustee shall set aside in the Sinking Fund (in order to provide for the payment of the interest on and principal of the Bonds as the same become due) (i) beginning in the calendar month following the Completion Date

of the Project or the month of April, 1940, whichever shall be earlier, a sum equal to one-sixth of the interest on all the Bonds outstanding becoming due on the next succeeding interest payment date, and (ii), in addition, beginning in [fol. 69] the month of April, 1942, a sum equal to one-twelfth of the principal amount of outstanding Bonds becoming due on the next serial maturity date of Bonds; and (iii), in addition, any deficiencies in said amount for previous months;

(2). After setting aside in the Sinking Fund the amounts provided in subsection (1) of this Section, the Trustee shall set aside in the Sinking Fund (in order to provide a reserve for the Bonds), beginning in the calendar month following the Completion Date of the Project or the month of October, 1939, whichever shall be earlier, a sum equal to one-fifth of the aggregate amounts required to be set aside pursuant to subdivisions (i) and (ii) of said subsection (1), and in addition, any deficiencies in said sum for prior months, provided, however, that whenever there shall be in the Sinking Fund (in addition to the amounts to be set aside therein pursuant to subdivision (1) of this Section) an amount equal to the interest on all the Bonds, and the principal of the Bonds maturing, on the next two succeeding interest payment dates, no amount need be set aside pursuant to the provisions of this subdivision (2) unless the Authority shall be in default under the terms of the Bonds or this Indenture;

(3) In the event that any sums in the Sinking Fund set aside pursuant to subsection (2) of this Section (or pursuant to this subsection) shall have been allocated to make up deficiencies in the amounts to be set aside pursuant to subsection (1) of this Section (as provided in Section 6.03 hereof), or shall have been used for the payment of any items of repair or reconstruction for which other monies available therefor shall be insufficient (as provided in Section 9.08 hereof), the Trustee shall set aside in the Sinking Fund out of the first monies available in the Revenue Fund, after setting aside the amounts required then or theretofore to be set aside pursuant to subsections (1) and (2) of this Section, the amounts so allocated or paid; and

(4) The Trustee shall retain in the Revenue Fund any monies remaining and representing Revenues from prior



[fol. 70] months, the same to be available for any corporate purpose of the Authority, and from time to time shall pay the same to the Authority upon the written request of the Authority signed by the Treasurer thereof, stating in general the purpose or purposes for which such monies so withdrawn are to be used. Any monies representing Revenues from the current month shall be held until applied during the following month in accordance with the provisions of Section 5.03 and this Section 5.04.

All monies set aside in the Sinking Fund shall be held by the Trustee and applied in accordance with the provisions of Article VI hereof.

## ARTICLE VI

### Sinking Fund and Application Thereof

Section 6.01. The fund created by the transfer thereto of cash, if any, remaining in the Construction Fund after the Project shall have been completed and by transfers thereto from time to time from the Revenue Fund as hereinabove provided, shall be known as the "Sinking Fund" and shall be held and used by the Trustee in the manner and for the purposes hereinafter in this Article specified. Any additional cash received from the Government pursuant to the Loan Agreement after the Completion Date of the Project and not necessary for the payment of Costs of Construction of the Project shall likewise be deposited forthwith in the Sinking Fund. The Authority shall deposit in the Sinking Fund forthwith all amounts received as accrued interest upon the sale of any Bonds.

As security for the cash held by the Trustee in the Sinking Fund the Trustee agrees to pledge and at all times keep pledged with the Authority securities, in bearer form, constituting direct obligations of, or unconditionally guaranteed as to principal and interest by, the United States of America, having an aggregate market value, exclusive of accrued interest thereon, at least equal to the amount of cash at the time constituting the Sinking Fund, provided that with the consent of the Authority such pledged securities may be deposited with the Federal Reserve Bank [fol. 71] of Kansas City or the Oklahoma City branch thereof, or any other bank or trust company satisfactory



to the Authority, and a trust receipt or trust receipts therefor delivered to the Authority. The Authority covenants and agrees that no funds will be allowed to be or remain deposited in the Sinking Fund unless secured as above provided.

Section 6.02. The monies in the Sinking Fund shall be held by the Trustee in a special trust fund in trust for the payment of the principal of and interest on the Bonds as such items severally mature and the purchase and retirement of said Bonds, all as hereinafter provided.

The Trustee shall hold for the payment of interest on and principal of the Bonds issued hereunder and for no other purpose (i) all monies set aside in the Sinking Fund in accordance with the provisions of subdivision (1) of Section 5.04 hereof, and (ii) all monies received as accrued interest on the sale of the Bonds, and (iii) out of the monies transferred from the Construction Fund to the Sinking Fund, an amount equal to one-sixth of the interest becoming due on the interest payment date (not later than April 1, 1940) next succeeding the Completion Date for each month from the preceding interest payment date to and including the calendar month during which the Completion Date shall occur, which amount the Trustee shall set aside in the Sinking Fund immediately upon transfer of said monies from the Construction Fund. Not later than the day preceding each interest payment date, the Trustee shall allocate and hold out of said monies an amount equal to the interest on all the Bonds, and the principal of the maturing Bonds, becoming due on such date, and such monies shall (from the time of such allocation) be and they hereby are appropriated irrevocably for and shall be applied to the payment of such interest and principal.

Section 6.03. All monies transferred from the Construction Fund to the Sinking Fund, other than those referred to in the preceding Section, and including additional cash received from the Government pursuant to the Loan Agreement after the Completion Date of the Project and not necessary for the payment of Costs of Construction of the Project, shall be applied by the Trustee to the purchase [fol. 72] of outstanding Bonds at not exceeding the redemption price, provided that, in the event that on any February 15 or August 15 after April 1, 1940, the amount of such monies held by the Trustee, together with any other

monies available for or required to be applied to such purpose, shall be in excess of \$50,000, the Trustee shall apply all such monies to the redemption of outstanding Bonds of the latest maturities on the next succeeding interest payment date, in an amount sufficient to exhaust such monies, as nearly as may be.

Whenever, on the 15th day of any calendar month, the amount remaining in the Revenue Fund shall be insufficient to set aside (out of the Revenue Fund) the amounts referred to in subdivision (1) of Section 5.04, the Trustee shall allocate out of any other monies in the Sinking Fund (other than those hereinabove required to be applied to the purchase or redemption of outstanding Bonds) an amount equal to such deficiency, and the same shall thenceforth be held as a part of the monies required to be set aside under said subdivision (1) out of the Revenue Fund.

Section 6.04. Whenever there shall be in the Sinking Fund on any interest payment date, after setting aside as aforesaid the interest and principal becoming due on such date, and excluding any amounts transferred from the Construction Fund, any monies in excess of an amount equal to the interest becoming due on all the Bonds, and the principal of the Bonds maturing, on the next succeeding four interest payment dates, the Trustee shall thereafter apply such excess to the purchase from time to time of outstanding Bonds (to the extent to which such Bonds shall be available for such purchase) at the lowest price or prices obtainable, but not exceeding the redemption price of the Bonds so purchased, with accrued interest thereon to the date of purchase. The determination of the Trustee as to the lowest price or prices obtainable shall be final.

Any monies in the Sinking Fund available for the purchase of Bonds as in this Section provided, and not actually applied to that purpose on or before the 45th day preceding [fol. 73] the next ensuing interest payment date, may be applied by the Trustee (on such interest payment date) to the redemption of Bonds in the manner provided in Article VII hereof, and shall be so applied if the aggregate amount of such monies (with any other monies available for such redemption) exceeds \$50,000. Any portion of such excess remaining on such next succeeding interest payment date shall again become and be available for the general purposes of the Sinking Fund.

Section 6.05. In case of the happening of an event of default as in Article X hereof provided, any monies in the Sinking Fund (including the monies referred to in Section 6.03) not previously allocated pursuant to the provisions of Section 6.02 hereof, or applicable to Bonds or interest coupons previously matured (by lapse of time, call for redemption or otherwise) or otherwise irrevocably appropriated for the payment of specific Bonds or interest coupons, shall be held ratably for the benefit of the holders of the outstanding Bonds and coupons and applied in accordance with the provisions of said Article X.

Section 6.06. After the Completion Date, whenever and so long as the amount in the Sinking Fund shall equal the aggregate amount then due and thereafter to become due for the principal of and interest on all the Bonds then outstanding, no further monies need be set aside into the Sinking Fund unless the Authority shall be in default under the terms of the Bonds or this Indenture.

## ARTICLE VII

### Redemption of Bonds

Section 7.01. The Bonds shall be redeemable, at the option of the Authority or through operation of the Sinking Fund, upon any interest payment date, as a whole or in part (in the inverse order of maturities), upon not less than thirty (30) days' prior notice to the holders thereof given in the manner herein provided, at a price (hereinafter called the "redemption price") equal to the principal amount thereof plus interest accrued thereon to the redemption date and a redemption premium equal to one-fourth of one per cent ( $\frac{1}{4}\%$ ) of the principal amount thereof for each year or fraction thereof from the redemption date to the date [fol. 74] of maturity, provided, however, that in no event shall such redemption premium exceed five per cent (5%) of such principal amount.

In case the Authority shall elect, or the Trustee shall otherwise be obligated, to redeem less than all of the Bonds at the time outstanding, the Bonds so redeemed shall be Bonds of the latest maturity or maturities then outstanding and in the event less than all of the Bonds of any one maturity are to be redeemed the Bonds of such maturity to be redeemed shall be determined by the Trustee by lot in any usual manner approved by it.

Section 7.02. In case the Authority shall elect to redeem all or any part of the Bonds issued hereunder, it shall, at least 45 days before the date designated for such redemption, give notice to the Trustee of its intention to redeem, on the redemption date specified in such notice, all the Bonds or the principal amount thereof to be redeemed, as the case may be. In case the Authority shall give notice of its intention, or the Trustee shall otherwise be obligated, to redeem Bonds, the Trustee shall give notice of intention to redeem all the Bonds, or a part thereof, as the case may be, on the date therein designated, specifying in case of partial redemption the distinctive numbers of the Bonds to be redeemed, and in every case stating that on said redemption date there will become and be due and payable upon each Bond so to be redeemed, at the office of the Trustee in the City of Miami, State of Oklahoma, or at the option of the holder, at the principal office of The Chase National Bank of the City of New York, in the Borough of Manhattan, City and State of New York, the principal thereof and accrued interest thereon to the date of redemption, together with the redemption premium (if any) specified in such Bond and that from and after such redemption date interest thereon will cease to accrue. Such notice shall (unless waived by the holders of all the Bonds to be redeemed) be published in two daily newspapers, one published and of general circulation in the City of Miami, State of Oklahoma, and the other published and of general circulation in the Borough of Manhattan, City and State of New York, or in lieu of either of said daily newspapers, in a recognized [fol. 75] daily financial journal published and of general financial circulation in said City of Miami or said Borough of Manhattan, as the case may be, at least once a week for four successive weeks prior to the redemption date, the first such publication to be not less than thirty (30) days nor more than forty-five (45) days prior to the redemption date. Such notice shall also (unless waived as aforesaid) be sent by the Trustee through the mail, postage prepaid, not less than thirty (30) days nor more than forty-five (45) days prior to the redemption date to the Government and to the registered owners of all Bonds, registered as to principal, to be redeemed, at the addresses of such owners as they shall appear on the registry books of the Authority; but no failure to mail such notice to such registered owners nor any defect therein shall affect the validity and effect



tiveness of the call and redemption of any Bonds so to be redeemed.

Section 7.03. In the event that the Authority shall give notice of its election to redeem bonds, as in Section 7.02 provided, the Authority shall, and it hereby covenants that it will, prior to the redemption date, deposit with the Trustee a sum of money sufficient to pay the redemption price of the Bonds so called for redemption, or a sum which together with any sums already held by the Trustee and available for such purpose, shall be sufficient therefor.

Section 7.04. Notice having been given by the Trustee in the manner provided in Section 7.02, the Bonds so called for redemption shall become due and payable on the redemption date so designated at the redemption price, and upon presentation and surrender thereof at either of said offices, in negotiable form, together with all appurtenant coupons, if any, maturing subsequent to the redemption date, will be paid at the redemption price and will be cancelled forthwith and no Bonds shall be issued in lieu thereof. Such payment of the redemption price, as hereinabove provided, shall be made to the bearer of such Bond, unless it shall then be registered, in which case such payment shall be made to or upon the order of the registered owner, but in either case only upon the surrender of such Bond with all appurtenant coupons, if any, maturing after said redemption date. All unpaid interest installments represented by [fol. 76] coupons which shall have matured on or prior to the date of redemption specified in such notice shall continue to be payable to the bearers of such coupons severally and respectively, and the redemption price payable to the holders of Bonds presented for redemption shall not include such unpaid installments of interest unless coupons representing such installments shall accompany the Bonds presented for redemption. Any amount deducted for missing coupons shall be held for the payment thereof upon presentation, and for no other purpose. From and after the redemption date, if monies for the redemption of all the Bonds to be redeemed shall have been available for redemption on the redemption date, the Bonds so called for redemption shall cease to bear interest and shall cease to be entitled to the security and benefits of this Indenture, the coupons for interest appertaining thereto maturing subsequent to the redemption date shall be void, and as respects the

Authority's liability thereon such Bonds and coupons shall be deemed to have been redeemed and paid. If said monies shall not be so available on the redemption date, such Bonds shall continue to be outstanding and to bear interest at the rate of four per cent (4%) per annum until paid, and shall continue to be entitled to the security and benefits afforded by this Indenture.

Section 7.05. In the event that the Authority shall deposit with the Trustee the amount necessary to redeem, as above provided, all outstanding Bonds, together with proof satisfactory to the Trustee that the required notice of redemption has been given (or provision satisfactory to the Trustee made for the giving of such notice) and proof satisfactory to the Trustee that all other sums payable hereunder by the Authority have been duly paid, then, at any time on or after the redemption date (if monies for the redemption of all of the Bonds shall have been available for such redemption on such date), the Trustee, at the request of the Authority, and at the Authority's expense, will cancel the lien of this Indenture, and convey, assign, transfer, deliver and pay over to the Authority all of the pledged Revenues then held by it hereunder (and not necessary to meet obligations of the Authority hereunder). The Trustee may accept a certificate of the Authority that all such other sums payable hereunder by the Authority have been duly paid [fol. 77] and shall be fully protected in acting upon such certificate.

Section 7.06. All monies deposited with or held by the Trustee for the redemption of Bonds under this Article shall, from and after the redemption date, be held by the Trustee in trust for, and irrevocably appropriated to, the redemption of the Bonds so to be redeemed.

## ARTICLE VIII

### Issuance of Junior Obligations

Section 8.01. The Authority covenants that it will not issue any bonds, notes or other securities, or incur any indebtedness (except current accounts for operation and maintenance, payable out of current Revenues available therefor), other than the Bonds, which shall be payable in whole or in part out of the Revenues of the Authority, except as provided in this Article.

Section 8.02. The Authority may from time to time after the Completion Date of the Project issue bonds or other obligations (herein called "junior bonds"), payable out of the Revenues, for the purpose of constructing extensions of the System (to become a part of the System) but only if

(a) The interest on and principal of the junior bonds shall be expressly subordinated to the Bonds (including the Sinking Fund payments to be made therefor under the provisions of subsections (1), (2) and (3) of Section 5.04) and shall be made payable only out of the monies available therefor under the provisions of subsection (4) of Section 5.04 hereof; and

(b) The Authority shall deliver to the Trustee a certificate signed and verified by the Treasurer of the Authority setting forth in reasonable detail:

(i) The aggregate principal amount of junior bonds then proposed to be issued, the approximate date as of which they are to be issued and the interest rate or rates thereof and the minimum price or prices at which they are to be sold;

[fol. 78] (ii) The aggregate principal amount of junior bonds then outstanding and (a) the annual interest charges upon all said junior bonds (including the annual amount necessary for amortization of any discount on the sale thereof), and (b) the average annual amount necessary as of the date of such certificate for amortization of the principal of such junior bonds;

(iii) (a) The interest charges for one year on all the junior bonds then proposed to be issued, including, if the minimum prices specified in such certificate shall be less than the principal amount of said junior bonds, the annual amount necessary for the amortization of the discount based upon such minimum prices and (b) the average annual amount necessary for amortization of the principal of such junior bonds;

(iv) The payments required to be made in the preceding fiscal year to the Sinking Fund pursuant to the provisions of subsections (1), (2) and (3) of Section 5.04 hereof;

(v) The net Revenues of the Authority for such preceding fiscal year, after deducting expenses for maintenance

and operation, but without deduction for the amounts paid in the Sinking Fund during said year; and

(vi) The estimated increase in expenses of maintenance and operation due to the construction and operation of such extensions, as certified by an Engineer;

and showing that the net Revenues for such preceding fiscal year shown pursuant to subsection (v) are not less than the Sinking Fund payments for such fiscal year as shown pursuant to subsection (iv), plus 110% of the sum of (a) the interest charges (including amortization of discount) for one year and average annual amortization of principal upon the junior bonds then outstanding, as shown pursuant to subsection (ii), plus (b) the interest charges (including amortization of discount) for one year and average annual amortization of principal upon all the junior [fol. 79] bonds then proposed to be issued, as shown pursuant to subsection (iii), plus (c) the estimated increase of operating expenses due to the construction and operation of such extensions as shown pursuant to subsection (vi). The average annual amount necessary for amortization of any junior bonds shall be deemed to be the aggregate principal amount of said bonds outstanding (or to be issued), divided by the number of years from the date of determination (which, in case of bonds not yet issued, shall be the proposed date of issuance) to the final maturity of said junior bonds, but shall not be less than the maximum amount maturing in any year during the first half of the period from the date of determination to the date of final maturity of such junior bonds nor less than 50% of the maximum amount maturing in any year thereafter and prior to the final maturity of such junior bonds; and

(c) At the date of issuance of said junior bonds there shall have been set aside in the Sinking Fund all the amounts required to be set aside therein pursuant to the provisions of subdivisions (1), (2) and (3) of Section 5.04 hereof to and including the first day of the calendar month next succeeding the date of issuance of such junior bonds; and

(d) Such junior bonds shall bear such rate or rates of interest and shall be sold at such price or prices (not less than the minimum price stated in the certificate re-



ferred to in subsection (b) hereof) that the interest cost to maturity of each of said junior bonds, computed in accordance with standard tables of bond values, shall not exceed 6% per annum, payable semi-annually; and

(e) The Authority shall not be in default under the terms of the Bonds or this Indenture or of any outstanding junior bonds.

The Trustee shall, upon request of the Authority and compliance with the provisions of this Section to the satisfaction of the Trustee, deliver to the Authority a certificate stating that in the opinion of the Trustee the Authority has so complied with the provisions hereof with respect to the junior bonds therein specified, and such certificate shall be [fol. 80] conclusive evidence that the provisions of this Section have been complied with (as of the date of such certificate). In executing any such certificate the Trustee shall be entitled to rely upon a certificate of the Authority, signed by the Chairman and the Treasurer thereof, that the Authority is not in default under the terms of the Bonds, the Indenture or any outstanding junior bonds.

## ARTICLE IX

### General Covenants

Section 9.01. The Authority covenants and agrees that it will duly and punctually pay or cause to be paid (out of the special funds herein provided for such purpose) the principal of every Bond issued under this Indenture, and the interest thereon, at the dates and places and in the manner mentioned in such Bonds and in the coupons thereto appertaining, according to the true intent and meaning thereof, and that it will faithfully do and perform and at all times fully observe any and all covenants, undertakings, stipulations and provisions contained herein or in any Bond executed, authenticated and delivered hereunder.

Section 9.02. The Authority will not directly or indirectly extend or assent to the extension of the time of payment of any of the coupons or claims for interest by purchase or funding of such coupons or claims for interest or by any other arrangement, and in case the time for payment of any such coupons or claims for interest shall be extended such coupons or claims for interest shall not be entitled, in case of

any default hereunder, to the benefit of this Indenture or to any payment out of the assets of the Authority, except subject to the prior payment of the principal of all Bonds issued and outstanding hereunder and of such portion of the accrued interest thereon as shall not be represented by such extended coupons or claims for interest.

Section 9.03. The Authority hereby irrevocably appoints the Trustee as its agent to maintain an office or agency at its principal office in the City of Miami, State of Oklahoma; and the Authority will establish and at all times maintain an office or agency at a bank or trust company in the Borough [fol. 81] of Manhattan, in the City and State of New York, where Bonds and coupons may be presented for payment, and where notices, presentations and demands in respect of the Bonds and coupons or of this Indenture may be served, and will cause to be furnished to the Trustee from time to time complete information with respect to all payments made at such office or agency in said Borough of Manhattan. The Trustee shall not be under any liability to the Authority or to any other corporation or person in respect of any such presentation, demand or notice.

Section 9.04. The Authority covenants and agrees that all Revenues of every kind and nature derived from the operation of the properties of the Authority, all proceeds of insurance on or in connection with the properties of the Authority and the proceeds of all indemnity bonds or other securities, except security given by the Trustee for funds held by it hereunder, shall be paid to the Trustee or shall be deposited by the Authority with the Trustee hereunder, to be held as additional security until paid out or applied by the Trustee as in this Indenture provided.

Section 9.05. The Authority represents that it is a reclamation and conservation district, and a public corporation, duly organized and existing under the Constitution and laws of the State of Oklahoma and that it is duly authorized under the laws of the State of Oklahoma and by proper authority from all other public bodies and authorities, if any, having jurisdiction thereof, to construct, operate, maintain, repair, renew and replace the Project and System as herein contemplated and to levy and collect tolls, rents, fees and other charges, and to pledge its Revenues and other rights purported to be pledged hereby, and all corporate action on its part to that end has been duly and validly taken.

The Authority further covenants that the System and each and every part thereof will be continuously operated by the Authority in an efficient and economical manner and will be kept in thorough repair and maintained in a high state of operating efficiency and in such manner that the interests of the people of the State of Oklahoma and of the Bondholders and of the Authority will be promoted.

[fol. 82] Section 9.06. The Authority covenants that there is not now outstanding and that the Authority will not at any time create or allow to accrue or to exist any lien upon the System, or any part thereof, or the Revenues at any time derived from the operation thereof, or any funds at any time held by the Trustee hereunder, except the lien of this Indenture or any indenture supplemental hereto and except as and to the extent permitted by Article VIII hereof; that the lien of this Indenture will not be impaired in any way as a result of any action or non-action on the part of the Authority, its Board of Directors and officers, or any thereof, and that the Authority has, or will have upon acquisition and/or construction thereof, and will, subject to the provisions hereof, continuously preserve, good and indefeasible title to the System and every part thereof.

The Authority further covenants that it will promptly pay or cause to be paid, out of the Construction Fund or the Revenue Fund (or Operating Fund) herein mentioned, as hereby permitted, all lawful taxes, assessments or other governmental charges at any time levied, assessed or charged upon or against the System, or any part thereof, and/or the interest of the Trustee and the Bondholders therein; provided, however, that no such tax or assessment shall be required to be paid so long as the validity of the same shall in good faith be contested and written notice of such contest given to the Trustee.

The Authority further covenants that it will not make or permit any sale or disposition of the System or any necessary part thereof and that no property will be sold or otherwise disposed of so long as the same shall be necessary or desirable in the efficient and economical operation of the System, and that no franchises, permits, privileges, easements or water rights will be allowed to lapse or to be forfeited so long as the same shall be necessary in the operation of the System or any part thereof.



Section 9.07. The Authority covenants that it will at any time or times do, execute, acknowledge and deliver, and cause to be done, executed, acknowledged, and delivered, all such further acts, assignments, pledges, transfers and as- [fol. 83] surances in law as the Trustee shall reasonably require for the better assuring, assigning, transferring, pledging and confirming unto the Trustee, all and singular, the Revenues herein assigned, transferred and pledged or intended so to be, and that it will cause this Indenture and any and all additional instruments executed pursuant to the provisions hereof at all times to be kept recorded and/or filed in such public offices as may be necessary or required by law in order fully to preserve, continue and protect the security of the Bonds and the rights and remedies of the Trustee, and that it will pay any recording tax or any tax due upon any recording or filing and will punctually and fully comply with all the requirements of any and every recording tax law or other law affecting the due recording and/or filing of this Indenture or of any such additional instruments.

Section 9.08. The Authority covenants that it (i) will at all times keep insured such of its plants, structures, buildings, stations, machinery, equipment apparatus, dams and canals, as are usually insured by corporations operating like properties, to the full insurable value thereof in a responsible insurance company or companies satisfactory to the Trustee against risks, accidents or casualties against which insurance is usually carried by corporations operating like properties, including (but only if such insurance can be procured at reasonable cost) insurance against floods, and (ii) will also at all time after the Completion Date keep the aforesaid properties insured against loss of use and occupancy resulting from any of the aforesaid hazards in such an amount as will provide during the period of such loss of use and occupancy, beginning on the eighth day of such period and extending for not less than one year (for total loss and a proportionate part for partial loss), a coverage equal to a monthly income of not less than one-twelfth of the estimated gross Revenues of the System for the then current twelve-month period beginning on the eighth day after the date of such loss, provided that such estimated gross Revenues shall in no event be less than the actual gross Revenues for the preceding twelve months.



period and (iii) will also at all time (if such insurance can be procured at reasonable cost) maintain workmen's compensation insurance and insurance against public liability and property damages, in a reasonable amount, in [fol. 84] a responsible insurance company or companies satisfactory to the Trustee; provided, however, that at any time while any contractor engaged in constructing any part of the System shall be fully responsible therefor, the Authority shall not be required to keep such part of the System insured.

All policies of insurance shall be in form satisfactory to the Trustee. They shall be delivered to the Trustee and shall be for the benefit of the Trustee and the Authority, as their respective interests may appear, the proceeds thereof to be payable to the Trustee.

In the event of any loss or damage to the System the Authority will repair or reconstruct the damaged portion of the property and will apply the proceeds of the insurance policies covering such loss solely for that purpose. The Authority will begin such work of repair or reconstruction promptly after such loss or damage shall occur and will continue and properly complete the same as expeditiously as possible and will pay or cause to be paid all costs and expenses in connection therewith so that the same shall be so completed and the property be free and clear of all mechanics' and other liens and claims. The proceeds of all such policies paid to the Trustee shall be held by it as additional security hereunder until paid out by it as herein provided. If the proceeds received by reason of any such loss shall not exceed \$20,000, such proceeds shall be paid over by the Trustee to or upon the order of the Authority upon its written request, and the Authority covenants and agrees to apply such proceeds to the repair or reconstruction as aforesaid of the damaged portion. If the proceeds received by reason of any such loss shall exceed \$20,000, the same shall also be used as aforesaid solely for the repair or reconstruction of the damaged portion, and such proceeds shall be paid out by the Trustee from time to time to or upon the order of the Authority, but only upon receipt by the Trustee of

(1) the written requisition of the Authority executed by its General Manager or Chairman and its Treasurer under the corporate seal, specifying that certain expenditures

have been made or indebtedness incurred in repairing or reconstructing the portion so damaged and that the proceeds of the insurance received by the Trustee, together with any other monies then held by the Authority or the Trustee available for such purpose, will be sufficient to complete such repair or reconstruction, and that the interest of the Authority in the property in question is free of all liens, charges and encumbrances, and requesting the payment by the Trustee to or upon the order of the Authority of an amount not in excess of the amount of such expenditures; and

(2) if the holder or holders of not less than 51% of the outstanding Bonds shall request, the written approval of said requisition by an engineer named in said request.

In the event that the proceeds of said insurance, together with other monies then held by the Authority available for such purpose, shall be insufficient to complete such repair or reconstruction, said proceeds shall be deposited with and held by the Trustee as security for the Bonds and for the benefit of the holders thereof; provided, however, that if the Authority shall request and (i) the Trustee shall consider the same necessary for the protection of the Bondholders or (ii) the holders of not less than seventy-five per cent (75%) of the outstanding Bonds shall so request in writing, the Trustee may permit to be applied to such repair or reconstruction (in the manner hereinabove specified) such monies and any other monies (including monies in the Sinking Fund, other than those set aside pursuant to subdivision 1 of Section 5.04) held by it hereunder and not irrevocably allocated to some other purpose.

Any amounts held by the Trustee and remaining after the completion of and payment for such repair or reconstruction shall be deposited in the Sinking Fund and applied accordingly.

The proceeds of insurance against loss of use and occupancy shall be considered to be Revenues of the System and deposited in the Revenue Fund and applied accordingly.

There shall be deposited with the Trustee, at such times as it may reasonably request, and at least once in each fiscal year without any such request, a detailed statement of the policies of insurance effected by the Authority [fol. 86] then outstanding and in force. In case the Trustee

shall at any time notify the Authority in writing that it disapproves of any insurance company, or of the terms of any policy, the Authority will forthwith effect other insurance satisfactory to the Trustee. The Trustee may accept as conclusive the adjustment of any loss or losses by the Authority and any insurance company, without the necessity of any further action on the part of the Trustee.

The Trustee is hereby authorized in its own name to demand, collect, sue for and receipt for all insurance monies which may become due and payable to it under any insurance policy.

Section 9.09. The Authority covenants that it will, before the System is put in operation, prepare, adopt and file with the Trustee, a schedule of rents, tolls, rates and other charges for electrical energy and for any and all other commodities, services and facilities to be furnished or supplied by the Authority, calculated on the basis of all available estimates (and with due allowance for contingencies) to yield funds at least sufficient

(a) to provide for the establishment and maintenance of the Operating Fund pursuant to Article V hereof and to pay all proper costs of operation and maintenance of the System;

(b) To meet the payments to the Sinking Fund specified in subsections (1), (2) and (3) of Section 5.04 hereof;

(c) To meet all obligations of the Authority under any junior bonds issued in accordance with the provisions of Section 8.02 hereof; and

(d) To meet all other obligations of the Authority hereunder or under the Loan Agreement or otherwise.

The Authority further covenants that it will from time to time, and as often as necessary, revise such schedule so that the Revenues so derived will be sufficient for the purposes aforesaid.

The Authority further covenants that all such revisions, when made and adopted, shall likewise be filed with the Trustee and that rates, tolls, rents and other charges in [fol. 87] accordance with the schedule at the time in effect, will at all times be collected and paid over to the Trustee for credit to the Revenue Fund.

Section 9.10. The Authority covenants that it will at all times keep proper books of record and account in which full, true and correct entries will be made of all its dealings and transactions in accordance with accepted accounting practices. So long as any of the Bonds shall be outstanding, the Authority will furnish to the Trustee in duplicate:

(a) On or before the 20th day of each month beginning one month after the Date of Completion a statement certified as correct by the Auditor of the Authority showing the gross Revenues, the expenses for maintenance and operation and the net Revenues of the Authority during the preceding month and the 12 months' period ending with said month;

(b) On or before each March 1, beginning with March 1, 1939, a full audit and report made and certified as correct by a firm of certified public accountants, who shall be members of the American Institute of Accountants and satisfactory to the Trustee, covering the operations of the Authority for the year ending on the next preceding December 31, showing the gross Revenues, the expenses for maintenance and operation and the net Revenues of the Authority for such year, and, in such detail as the Trustee may request, the assets, liabilities and financial condition of the Authority, and an analysis of the surplus of the Authority, at the end of such year; and

(c) From time to time such other information concerning the Revenues and expenses of the Authority and the System as the Trustee or any purchaser or holder of 25% of the Bonds at the time outstanding may reasonably request.

The Authority further covenants and agrees that the System and each and every part thereof, and all books, records, accounts, documents and vouchers relating to the construction, operation, maintenance, repair, improvement and extension thereof, will at all times be open to inspection of the [fol. 88] Bondholders and their representatives, and to such accountants or other agents of the Trustee as the Trustee may from time to time designate, but the Trustee need not require any such inspection.

The Authority covenants that it will at all times keep such records and books of account and publish all such



statements as will comply with the aforesaid accepted accounting practices.

## ARTICLE X

### Default Provisions

Section 10.01. If one or more of the following events (herein called "events of default") shall happen, that is to say, in case

(a) Default shall be made in the payment of the principal of any Bond when payable, whether at maturity or by declaration or otherwise; or

(b) Default shall be made in the payment of any installment of interest on any Bond when the same shall become payable, and such default shall continue for thirty (30) days; or.

(c) Default shall be made by the Authority in the performance of any obligation in respect of the Operating Fund, the Revenue Fund or the Sinking Fund, and such default shall continue for sixty (60) days; or

(d) The Authority shall make any improper payments out of any of said Funds, and shall not make reimbursement to such Fund or otherwise correct such default within thirty days after notice of such default from the Trustee (which shall give such notice upon request of the holders of not less than twenty-five per cent (25%) of the outstanding Bonds); or

(e) The Authority shall fail to complete the Project within the time provided in section 4.08 hereof; or

(f) The Authority shall discontinue or unreasonably delay or fail to carry on with reasonable dispatch the construction of the Project; or

[fol. 89] (g) The Authority shall sell, transfer, assign or convey the System or any portion thereof, or of the properties or rights included therein, necessary or desirable in the operation of the System, or shall make any agreement for such sale or transfer, or shall allow any of its franchises, easements, or other rights, necessary in the operation of its properties, to lapse or to be forfeited; or

(h) The water rights of the Authority, or any thereof, necessary or desirable in the operation of its properties, shall lapse or be forfeited in whole or in part; or

(i) A receiver or liquidator of the Authority or of any of its properties shall be appointed and shall not be discharged within 60 days of such appointment; or

(j) The Authority shall be adjudicated a bankrupt or an insolvent, or shall file a voluntary petition in bankruptcy or shall make an assignment for the benefit of its creditors; or

(k) Default shall be made by the Authority in the observance of any other covenant, condition or agreement of the Authority under this Indenture or the Bonds and such default shall continue for a period of sixty (60) days after written notice of such default to the Authority from the Trustee (which shall give such notice upon request of the holders of not less than twenty-five per cent (25%) of the outstanding Bonds);

the Trustee may, and upon written request of the holders of not less than twenty-five per cent (25%) in principal amount of the Bonds then outstanding hereunder shall, by notice in writing delivered to the Authority, declare the principal of all Bonds hereby secured then outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable; subject, however, to the right of the holders of 25% in principal amount of the outstanding Bonds by written notice to the Authority and to the Trustee to annul such declaration and destroy its effect at any time before possession of the System (or any part thereof) is taken hereunder, if, before any such possession is taken, all covenants with respect to which [fol. 90] default shall have been made shall be fully performed, and all arrears of interest upon all Bonds outstanding hereunder and the reasonable expenses and charges of the Trustee, its agents and attorneys, and all other indebtedness secured hereby, except the principal of any Bonds not then due by their terms and interest accrued on such Bonds since the last interest day, shall be paid, or the amount thereof shall be paid to the Trustee for the benefit of those entitled thereto.

Section 10.02. In case of the happening of an event of default as specified in Section 10.01 hereof the Trustee may in its discretion, and upon the written request of the holders

of twenty-five per cent (25%) or more in principal amount of the Bonds then outstanding hereunder and upon being indemnified to its satisfaction shall, proceed to protect and enforce its rights and the rights of the holders of the Bonds hereunder and under said Bonds by a suit or suits, whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted or for the enforcement of any other proper legal or equitable remedy, as the Trustee being advised by its counsel shall deem most effectual to protect and enforce its rights and the rights of the holders of the Bonds hereunder.

The Trustee shall be entitled upon, or at any time after, the commencement of any proceedings instituted in case of default; whether or not all of the Bonds shall have been declared or become due and payable, and with or without possession of any of the Bonds, as a matter of right, to the appointment of a receiver of the System, or any part thereof, and all property at the time forming a part of or used in connection with the System, and all or any other of the books or properties of the Authority and of the rents, issues and profits of all thereof. Any such receiver shall have the right to enter and take possession of all or any part of the property of the Authority and to operate and maintain the same, and fix, collect and receive tolls, rates, rents and charges sufficient to provide Revenues adequate to pay the amounts due under this Indenture and/or under the Bonds and to pay and meet the items specified in Section 9.09 hereof, and the costs and disbursements of any such proceeding [fol. 91] or proceedings, and shall have all the usual powers and duties of receivers in similar cases. Any such receiver shall apply the monies collected through operation and management of such property to the payment of the costs and disbursements of such proceeding, including reasonable fees, counsel fees and expenses of the Trustee and of such receiver, and the same shall constitute taxable disbursements in such proceeding, if allowed by the Court having jurisdiction thereof and of such receiver, and the remainder of all revenues collected and received by such receiver shall be applied to the payment of expenses and charges of operating and maintaining such property, and the balance, if any, toward the payment of the principal and interest of the Bonds hereby secured, and of any deficiency decree which may be entered in any such proceeding.

Section 10.03. It is expressly understood and agreed that upon the happening of an event of default, and until the same shall be cured or annulled, as in this Article provided, the holders of two-thirds in principal amount of the Bonds at the time issued and outstanding hereunder, shall have the right by instrument or instruments in writing delivered to the Trustee to direct any and all action taken or to be taken by the Trustee under this Article; provided that such direction shall not be contrary to law or to the provisions of this Indenture.

Section 10.04. In case of the happening of an event of default as specified in Section 10.01 hereof, the Trustee may, and (subject to the provisions of Section 10.03 hereof) upon the written request of the holders of twenty-five per cent (25%) in aggregate principal amount of the Bonds at the time outstanding shall, in its own name, but for the equal and proportionate benefit of the holders of all the Bonds, and with or without having possession thereof,

(a) By mandamus or other suit, action or proceeding at law or in equity, enforce all rights of the holders of the Bonds,

(b) Bring suit upon the bonds or the appurtenant coupons or both,

(c) By action or suit in equity, require the Authority [fol. 92] to act as if it were the trustee of an express trust for the Bondholders, and/or

(d) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the Bonds;

and it is expressly agreed that the foregoing powers and remedies shall be cumulative and in addition to every other power and remedy granted the Trustee hereunder or by law and that the same shall not (except as aforesaid) be limited by, and shall not limit, any other provision of this Indenture.

Section 10.05. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity or by statute. No



delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein and every such right and power may be exercised from time to time and as often as may be deemed expedient. In case the Trustee shall have proceeded to enforce any right under this Indenture by suit or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Authority and the Trustee shall be restored to their former positions and rights hereunder with respect to the Revenues pledged hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Subject to the provisions of the Constitution and laws of the State of Oklahoma, the Courts of the County of Craig in the State of Oklahoma, or any other county wherein the domicile of the Authority may be situated, shall have jurisdiction of any suit, action or proceeding by the Trustee on behalf of the Bondholders and of all property involved therein. In addition to all powers and remedies provided for herein or by law, the Trustee shall have and possess all powers necessary or appropriate for the exercise of any such powers or remedies or incident to the general representation [fol. 93] of the Bondholders in the enforcement of their rights.

Section 10.06. The Authority covenants that if default shall be made in the payment of the principal of any Bond hereby secured when the same shall become payable, whether at the maturity of said Bond or by declaration as authorized by this Indenture, then upon demand of the Trustee, the Authority will pay to the Trustee (but only out of the Revenues of the Authority and the special funds herein provided) for the benefit of the holders of the Bonds and coupons then outstanding hereunder, the whole amount due and payable on all such Bonds and coupons for principal and interest, with interest upon the overdue principal at the same rate borne by the Bonds which are overdue; and in case the Authority shall fail to pay the same forthwith upon such demand, the Trustee in its own name and as trustee of an express trust shall be entitled to sue for and recover judgment for the whole amount so due and unpaid;

provided, however, that nothing herein contained shall be construed to require the payment of the principal of or interest on the Bonds from any sources other than the Revenues of the Authority, or the special funds herein provided, or to constitute the Bonds a general obligation of the Authority; but such limitations shall not affect the right of the Bondholders or the Trustee or others to exercise their several remedies in case of default by the Authority in the performance of any of its covenants or obligations (irrespective of whether the Revenues or such special funds shall be adequate to meet such covenants or obligations).

The Trustee shall be entitled to sue and recover judgment as aforesaid either before or after or during the pendency of any proceeding for the enforcement of the lien of this Indenture upon the Revenues pledged hereunder, and shall be entitled to enforce payment of and to receive all or any portion of the amounts then remaining due and unpaid upon any and all the Bonds and coupons then outstanding hereunder for the benefit of the holders thereof. No recovery of such judgment by the Trustee and no levy of any execution upon any such judgment shall, in any manner, or to any extent, affect the lien of this Indenture upon the Revenues pledged hereunder or any part thereof, or any [fol. 94] rights, powers or remedies of the Trustee hereunder; or any lien, rights, powers or remedies of the holders of the Bonds, but such lien, rights, powers and remedies of the Trustee and of the Bondholders shall continue unimpaired as before.

Any monies thus collected or received by the Trustee under this Section, shall be applied by it first, to the payment of its expenses, disbursements and compensation and the expenses, disbursements and compensation of its agents and attorneys, and second, toward payment of the amount then due and unpaid upon such Bonds and coupons in respect of which such monies shall have been collected, ratably and, except as provided in Section 9.02 hereof with reference to extended coupons or claims for interest, without preference or priority of any kind according to the amounts due and payable upon such Bonds and coupons, respectively, at the date fixed by the Trustee for the distribution of such monies, upon presentation of the several Bonds and coupons and upon stamping such payment thereon, if partly paid, and upon surrender thereof if fully paid.

Section 10.07. If the Authority shall discontinue or unreasonably delay or fail to carry out with reasonable dispatch the Project or any part thereof or shall fail to complete the same within the time provided in Section 4.08 hereof, the Trustee may, upon the written request of the holders of not less than fifty-one per cent (51%) in principal amount of the Bonds outstanding, and upon being indemnified to its satisfaction (but without prejudice to any other remedy or right of the Trustee or of the holders of the Bonds and irrespective of whether any other event of default or defaults shall have happened hereunder) shall, apply to the court having jurisdiction for the appointment of a receiver to complete the Project, and such receiver, subject to the orders of the court having jurisdiction, shall complete the Project and for that purpose may enter upon and take possession of the Project and of the assets and properties of the Authority or any part or parts thereof, including any unexpended funds theretofore advanced by the Government pursuant to the Loan Agreement, and any or all plans and specifications, supplies, materials and equipment be- [fol. 95] longing to the Authority and used or useful in connection with the construction of said Project or any part thereof. For the purpose of such completion, such receiver, subject to the orders of such court, may make and enter into any and all contracts deemed by it to be necessary for architects, engineers, attorneys, contractors and for work, labor, materials, supplies and equipment in connection therewith and may enforce compliance with any contracts or agreements theretofore made by or on behalf of the Authority, make payments thereunder and do anything whatsoever that the Authority might do in such connection.

In any such event, such receiver may pay at any time any outstanding bills or liability or indebtedness contracted or incurred by the Authority or by such receiver in the Authority's behalf or by such receiver in his own behalf (as receiver).

Section 10.08. Upon the happening of any event of default as specified in Section 10.01 hereof, then and in every such case the Trustee in its discretion, subject, however, to the orders of any court having jurisdiction in the premises, may, with or without declaring the Bonds due and payable, enter upon and take possession of the System, or any part or parts thereof, and all or any other of the books or proper-

ties of the Authority, and operate the same in the name and as the agent of the Authority, either personally or by superintendents, managers, receivers, agents, servants and attorneys, and from time to time, either by purchase, repair or construction, may maintain and restore and insure and keep insured the same, and each and every part thereof, in the manner and to the same extent as is usual with like properties and likewise, from time to time, make all necessary repairs, renewals, replacements, alterations, additions and improvements therefo and thereon as may seem judicious, and the Trustee (subject as aforesaid to court order) shall be entitled to collect and receive all earnings, income, revenues, rates, tolls, rents, charges, issues and profits of the same and every part thereof and, after paying the expenses of administration, repairs, renewals, replacements, alterations, additions and improvements and all sums which may be paid for taxes, assessments, insurance or other charges thereon, as well as just and reasonable compensation for [fol. 96] the services of the Trustee and its agents, attorneys, receivers, counsel or employees, the Trustee shall apply the monies arising as aforesaid as follows (subject, however, to the provisions of Section 9.02 hereof with reference to extended coupons or claims for interest):

First. If the principal of all the Bonds shall not have become due, to the payment of the installments of interest which are due and unpaid, in the order of their maturity, with interest on the overdue installments of interest at the same rate of interest as the Bonds themselves bear, and next to the payment prorata of the principal of such of the bonds as shall have become due; or

Second. If the principal of all the Bonds shall have become due, to the payment of principal and accrued interest thereon, with interest on the overdue installments of interest at the same rate of interest as the Bonds themselves bear, prorata without any preference or priority whatever (except as provided in said Section 9.02).

Upon payment in full of whatever sums may be due for interest and principal or payable for other purposes and upon making good any other default hereunder, and after crediting to the Sinking Fund a sum sufficient to pay the interest becoming due on the Bonds outstanding hereunder



on the next succeeding interest payment date, and the principal of the Bonds maturing on such date, and in addition the amounts required to be set aside to such date pursuant to subsection (2) of Section 5.04 hereof, and crediting to the Operating Fund an amount sufficient to increase the same to the amount required to be in said Fund at such time pursuant to the provisions of Section 5.02 hereof, the balance of any monies then on hand derived from the operation of such properties shall be by the Trustee credited to the Revenue Fund and such property shall be returned to the Authority and the Authority shall be entitled to resume possession and management thereof, the same right of entry, however, to exist upon any subsequent default.

Section 10.09. Except as otherwise provided in this Indenture, all proceeds collected by the Trustee pursuant to the exercise of remedies and powers provided for in this Article shall, together with all other monies theretofore [fol. 97] received and then held by the Trustee (and not irrevocably appropriated to some other purpose), whether held in the Operating Fund, the Construction Fund, the Revenue Fund, the Sinking Fund or otherwise, be applied in order, as follows:

First. To the payment of all costs and expenses of the proceedings whereby such proceeds were obtained.

Second. To the payment of any unpaid compensation of the Trustee for its services hereunder, the expenses of the Trustee, including counsel fees and expenses, and any sums advanced by the Trustee, the repayment of which is a charge prior to that of the Bonds outstanding hereunder.

Third. To the payment of the whole amount then due and unpaid upon the Bonds issued hereunder and then outstanding for principal and interest with interest on over-due principal and over-due installments of interest at the rate of four per cent (4%) per annum, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the Bonds and appertaining interest coupons, then (subject, however, to the provisions of Section 9.02 hereof with reference to extended coupons or claims for interest) to the payment of the principal of and interest on all the Bonds then outstanding hereunder (whether or not such Bonds shall have matured) without preference or

priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest or otherwise, ratably to the aggregate of such principal and unpaid interest. Payments provided for herein shall be made on the date fixed therefor by the Trustee upon presentation of the several Bonds and coupons and stamping thereon the amount paid if such Bonds and coupons be only partly paid and upon surrender and cancellation thereof if fully paid.

Fourth. To the payment of the surplus, if any, to the Authority or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

[fol. 98] Section 10.10. All rights of action under this Indenture or under any of the Bonds or coupons may be enforced by the Trustee without the possession of any of the Bonds or coupons or the production thereof on any trial or other proceedings relative thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee and any recovery or judgment shall be for the equal benefit of the holders and registered owners of the Bonds and coupons.

Section 10.11. All rights of action in respect of this Indenture shall be exercised only by the Trustee or (as hereinafter provided) by a holder of all the Bonds outstanding hereunder and no holder of any Bond issued hereunder (other than a holder of all the Bonds outstanding) shall have any right to institute any suit, action or proceeding at law or in equity for the appointment of a receiver or for any other remedy hereunder or by reason hereof, unless and until the Trustee shall have received the written request of the holders of not less than twenty-five per cent (25%) in principal amount of the Bonds then outstanding hereunder and shall have been offered reasonable indemnity and shall have refused or for ten (10) days thereafter neglected to institute such suit, action or proceeding, and it is hereby declared that the making of such request and the furnishing of such indemnity are in each case conditions precedent to the execution and enforcement by any holder or holders of Bonds of the powers and remedies given to the Trustee hereunder and to the institution and maintenance by any such holder or holders of any action or cause of action for the appointment of a receiver or for any other remedy here-

under, but the Trustee may in its discretion and, when thereunto duly requested in writing by the holder or holders of at least twenty-five per cent (25%) in principal amount of the Bonds outstanding hereunder and furnished indemnity satisfactory to it and against expenses, charges and liability, shall forthwith take such appropriate action by judicial proceedings or otherwise in respect of any existing default on the part of the Authority as the Trustee may deem expedient in the interest of the holders of the Bonds outstanding hereunder.

Any holder of all the Bonds and coupons issued hereunder at the time outstanding shall have the right in his own [fol. 99] name and without any demand upon or other request of the Trustee and without joining the Trustee as a party in any legal proceeding, to take any action for the enforcement of the Bonds or this Indenture, and for such purpose shall have and may exercise all the remedies, rights and powers granted to the Trustee by the provisions of this Article X, including (but without limitation) the right to declare the principal of the Bonds due and payable; to bring any suit, action or other proceeding at law or in equity (including the right to the appointment of a receiver), to sue and recover judgment upon the Bonds and coupons and to collect any amounts payable pursuant thereto, and also shall have all the remedies, rights and powers granted by the Enabling Act.

Nothing in this Article X contained shall, in any event, affect or impair the right of any Bondholder, which is absolute and unconditional, to enforce the payment of the principal of and interest on his Bonds (but only out of the funds for such payment herein referred to), or the obligation of the Authority, which is also absolute and unconditional, to pay the principal of and interest on each of the Bonds issued hereunder (but only out of the funds for such payment herein referred to) to the respective holders thereof at the time and place in said Bonds and the appurtenant coupons expressed.

Section 10.12. Any notice required or permitted to be given by the Trustee to the Authority under the provisions of this Indenture shall be sufficiently given if it shall have been mailed postage prepaid addressed to the Authority at Vinita, Oklahoma, or at such other address as the Authority shall have in writing given to the Trustee.

## ARTICLE XI

## Concerning the Trustee

Section 11.01. The Trustee hereby accepts the trusts imposed upon it by this Indenture, but only upon and subject to the following express terms and conditions:

(a) The Trustee may execute any of the trusts or powers thereof and perform any duties required by it, by or through attorneys, agents or receivers, and shall be entitled to advice [fol. 100] of counsel concerning all matters of trust hereof and its duties hereunder, and may in all cases pay such reasonable compensation as it shall deem proper to all such attorneys, agents and receivers as may reasonably be employed in connection with the trusts hereof, and all such outlays and expenditures shall be repaid to the Trustee out of the trust estate. In case of any controversy between the Trustee and the Authority or in any case where the position of the Trustee is adverse to that of the Authority, the Trustee may select counsel without the approval of the Authority.

(b) The Trustee shall not be responsible for any recitals herein or in the Bonds, or for insuring any property, or collecting any insurance moneys, or the payment of any insurance premiums or the execution of any instruments of further assurance by the Authority, or for the execution, recording, registration, filing or refiling of this Indenture or of any indenture supplemental hereto or any instrument of further assurance, or for the validity thereof, or for the affixing or cancellation of any revenue stamps or for the sufficiency of the security for the Bonds issued under or intended to be secured hereby, or for the payment of taxes, charges, assessments or liens upon the property of the Authority, or otherwise as to the maintenance of the security hereof; nor be bound to ascertain or inquire as to the performance of any covenants, conditions or agreements on the part of the Authority, but the Trustee may require of the Authority full information and advice as to the performance of the covenants, conditions and agreements aforesaid. The recitals and statements in this Indenture and in the Bonds contained shall be taken as statements by the Authority and shall not be considered as made by or as imposing any obligation or liability upon the Trustee.



(c) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder or of any of the proceeds of such Bonds paid out conformably herewith. Holders of Bonds shall not be entitled to interest on funds deposited for payment of the same. The Trustee [fol. 101] may become the owner of Bonds secured hereby with the same rights which it would have if not Trustee.

(d) The Trustee shall be protected in acting upon any notice, requisition, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, and the Trustee shall not be bound to recognize any person as a holder of any Bond or to take any action at his request, unless such Bond shall be deposited with the Trustee, or submitted to it for inspection. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who, at the time of making such request, or giving such authority or consent, is the owner of any Bond secured hereby, shall be conclusive and binding upon all future owners of the same Bond and of Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate of the Authority signed by its General Manager or Chairman and by its Treasurer as sufficient evidence of the facts therein contained, and shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion, at the reasonable expense of the trust estate, in every case secure such further evidence as it may think necessary or advisable, but shall in no case be bound to secure the same. The Trustee may in relation to this Indenture act upon the opinion or advice of any attorney, valuator, surveyor, engineer, accountant or firm of accountants, or other expert satisfactory to it, whether retained or selected by the Trustee, the Authority, or otherwise, and shall not be responsible for any loss resulting from any action or non-action in accordance with any such opinion or advice and in the exercise of reasonable care.

[fol. 102] (f) The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith and in the exercise of reasonable care and believed by it to be within the discretion or power conferred upon it by this Indenture, or be responsible for the consequences of any error of judgment, and the Trustee shall not be answerable except for its own acts, receipts, neglects and defaults, nor for any loss, unless the same shall happen through the negligence or other default of the Trustee.

(g) The Trustee shall not be required to take notice, or be deemed to have notice of any default hereunder, unless the Trustee shall be specifically notified in writing of such default by the holders of one or more of the Bonds hereby secured and then outstanding.

(h) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which the Trustee may be in the possession of or manage the property of the Authority as in this Indenture provided.

(i) At any and all reasonable times, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all of the property of the Authority, including all the records, books, papers and contracts of the Authority, and to take such memoranda from and in regard thereto as may be desired.

(j) The Trustee shall not be required, except as otherwise in this Indenture provided, to give any bond or surety in respect of the execution of the trusts and powers conferred hereby, or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the withdrawal of any cash, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or action or evidence thereof, [fol. 103] in addition to that by the terms hereof required as a condition of such action, and by the Trustee deemed desirable for the purpose of establishing the right of the Authority to the withdrawal of any cash, or the taking of

any other action by the Trustee. The Trustee shall not be required to permit the withdrawal of any cash, or take any other action, if at the time there exists to its knowledge any default in respect of any of the covenants, agreements or provisions of this Indenture.

Section 11.02. The Trustee shall have a first lien hereunder upon the trust estate and any and all proceeds thereof for reasonable compensation, expenses, advances and counsel fees incurred in and about the execution of the trusts hereby created and the exercise and performance of the powers and duties of the Trustee hereunder and the cost and expense of defending against any liability in the premises of any character whatsoever. The compensation of the Trustee shall not be limited to or by any provision of law in regard to the compensation of a trustee of an express trust.

Section 11.03. The Trustee at the time acting hereunder may at any time resign and be discharged from the trusts hereby created (i) by agreement between the Trustee and the Authority with the consent of the holders of all the Bonds outstanding, or (ii) by giving not less than ninety (90) days' written notice to the Authority and, so long as the Government shall hold any of the Bonds, to the Government, and publishing notice thereof, specifying the date when such resignation will take effect, once a week in three (3) successive calendar weeks, in a newspaper published and of general circulation in the City of Miami, State of Oklahoma, and in a newspaper published and of general circulation in the Borough of Manhattan, City and State of New York, and such resignation shall take effect upon the day specified in such agreement or notice, unless a successor Trustee shall have been appointed by the holders of Bonds or by the Authority as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of a successor Trustee.

[fol. 104] Section 11.04. The Trustee may be removed at any time by an instrument or concurrent instruments in writing, delivered to the Trustee and to the Authority, and signed by the holders of a majority in amount of the Bonds hereby secured and then outstanding.

Section 11.05. In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of

dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Trustee shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the holders of a majority in principal amount of the Bonds hereby secured and then outstanding, by an instrument or concurrent instruments in writing, signed by such holders, or by their attorneys in fact, duly authorized in writing; provided, nevertheless, that in any such event the Authority, by an instrument executed by authority of its Board of Directors and signed by its General Manager or Chairman and Secretary, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondholders in the manner above provided; and any such temporary Trustee so appointed by the Authority shall immediately and without further act be superseded by the Trustee so appointed by such Bondholders. The Authority shall (unless waived by the holders of all the outstanding Bonds) publish notice of any such appointment made by it, once in each week for two successive calendar weeks, in a newspaper published and of general circulation in the City of Miami, State of Oklahoma, and in a newspaper published and of general circulation in the Borough of Manhattan, City and State of New York. Every such successor or temporary Trustee shall be a trust company or bank in good standing having a capital and surplus of not less than Two Million Dollars (\$2,000,000), if there be such a trust company or bank willing, qualified and able to accept the trust upon reasonable or customary terms.

In the event that no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this section within six (6) months after a vacancy in the office of Trustee shall have occurred, the holder of any Bond [fol. 105] issued hereunder or any retiring Trustee, may apply to any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice, if any, as it shall deem proper or prescribe, appoint a successor Trustee.

Section 11.06. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor, and also to the Authority, an instrument in writing accepting such appointment hereunder, and thereupon such



successor Trustee, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall nevertheless on the written request of the Authority execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it to its successor, provided, however, that before any such delivery is required or made, all fees, advances and expenses of the retiring or removed Trustee shall be paid in full. Should any deed, conveyance or instrument in writing from the Authority be required by any successor Trustee for more fully and certainly vesting in such Trustee the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Trustee, any and all such deeds, conveyances and instruments in writing shall on request be executed, acknowledged and delivered by the Authority. The resignation of any Trustee, and the instrument or instruments removing any Trustee and appointing a successor Trustee hereunder, together with all deeds, conveyances and other instruments provided for in this Article, shall, at the expense of the trust estate, be filed and/or recorded in each public office wherein this Indenture is filed and/or recorded.

Section 11.07. In case the Authority shall fail seasonably to pay or cause to be paid, out of the Revenue Fund or otherwise, any tax, assessment or governmental or other charge upon the System, or any part thereof, or to procure and maintain the insurance thereon required by this Indenture, the Trustee may pay such tax, assessment or governmental charge or procure and maintain such insurance, without prejudice, however, to any rights hereunder of the Trustee or the holders of the Bonds arising in consequence of such failure, and any amount at any time so paid under this Section, with interest thereon from the date of payment at the rate of four per cent (4%) per annum shall become so much additional indebtedness secured by this Indenture and the same shall be given preference in payment over any of said Bonds, but the Trustee shall be under no obligation to make any such payments, except out of the trust estate, unless in-

dennified to its satisfaction against the expense thereof or furnished with means therefor by the holders of Bonds outstanding hereunder.

Section 11.08. Any corporation into which the Trustee, or any successor to it in the trusts created by this Indenture, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee or any successor to it shall be a party, shall be the successor Trustee under this Indenture without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 11.09. After the Completion Date of the Project, no person shall be an officer, director or employee of the Trustee (or any successor Trustee) at any time when he shall be an employee or a director or an officer of the Authority.

## ARTICLE XII

### Sale of Property and Defeasance

Section 12.01. Unless an event of default as defined in Section 10.01 has occurred and be then continuing, the Authority may (to the extent permitted by law) at any time sell or otherwise dispose of surplus land and/or parts of the equipment of the System which are neither necessary nor useful for the operation thereof or which have become worn out, obsolete or damaged or otherwise unsuitable for use in the operation of the System, provided that if any such lands or equipment shall be sold the proceeds of the sale shall be paid to the Trustee and credited to the Revenue Fund.

[fol. 107] Section 12.02. If the Authority shall deliver to the Trustee for cancellation all of the outstanding Bonds and coupons, or, when the Bonds shall have become due and payable, either at maturity or by call for redemption or by declaration or otherwise; shall well and truly provide for the payment of the whole amount due or to become due on all Bonds and coupons then outstanding for principal and interest, by depositing with the Trustee for payment, as herein provided, of such outstanding Bonds and coupons the entire amount due or to become due thereon for principal

and interest; and in the event of redemption the redemption premium hereinabove provided, and also shall pay or cause to be paid all of the sums payable hereunder by the Authority, and shall well and truly keep and perform all of the things required to be kept and performed by it according to the true intent and meaning of this Indenture, then and in that case the Trustee shall, upon written request of the Authority, convey, assign, transfer and deliver to the Authority all Revenues and rights which may be held by it as Trustee hereunder, and all property, tangible and intangible, revenues, rights and interests at any time pledged hereunder shall revert to the Authority and the estate, rights, title and interest of the Trustee shall thereupon cease, determine and become void, and the Trustee in such case, on written request of the Authority, but at its cost and expense, shall cancel and discharge the lien of these presents and execute and deliver to the Authority such releases and instruments as shall be requisite to satisfy the lien hereof and terminate all obligations of the Authority hereunder. The Trustee shall apply any moneys so deposited with it to the payment of the Bonds, including principal and the unpaid interest.

### ARTICLE XIII

#### General Provisions

Section 13.01. Notwithstanding anything elsewhere in this Indenture contained, in case the Trustee shall for any reason whatever fail to produce, apply or pay out conformably herewith any moneys at any time belonging to the Construction Fund or to the Sinking Fund, then and in every such event the Authority is hereby authorized by the Trustee to sell such portion of the securities pledged by the [fol. 108] Trustee pursuant to the provisions hereof as security for such monies which the Trustee shall have failed to produce, apply or pay out conformably herewith, at any time or times thereafter, either at public or private sale, without demand, notice or advertisement, as will produce after deducting all costs and expenses, a sum at least equal to the monies which the Trustee shall have failed to produce, apply or pay out conformably herewith, and the Authority covenants and agrees that any monies realized by it out of the proceeds of any sale hereunder will be by it forthwith deposited in a bank or trust company which is a member of

the Federal Deposit Insurance Corporation (and secured as funds held by the Trustee are required to be secured pursuant to the provisions of this Indenture) and thereafter applied to the purposes for which the monies which the Trustee shall have failed to produce, apply or pay out conformably herewith were intended to be applied.

Section 13.02. The Authority, when authorized by its Board of Directors, may from time to time, and at any time, deliver to the Trustee one or more Indentures supplemental hereto for any one or more of the following purposes:

(a) To transfer, pledge and assign to the Trustee, and/or to subject to the lien of this Indenture, as additional security for the Bonds at any time issued and outstanding hereunder, the revenues from any additional property of the Authority, and to provide the terms and conditions upon which such Revenues shall be held; or

(b) To add to the covenants and agreements of the Authority in this Indenture or in any indentures supplemental hereto contained, other covenants and agreements thereafter to be observed or performed by the Authority, to provide additional remedies or to surrender any right or power herein reserved to or conferred upon the Authority or to or upon any successor corporation; or

(c) To amend the terms of this Indenture in accordance with the provisions of Section 13.06 hereof; or

(d) To impose further obligations or duties on the Trustee in order to comply with the provisions of any federal or [fol. 109] state law which may for any reason be applicable to this Indenture, or to qualify the Bonds for transportation or communication of the Bonds or any prospectus concerning the same in interstate commerce or through the mails.

The Trustee is hereby authorized to join with the Authority in the execution of any such supplemental indenture and to accept any such transfer, pledge, or assignment, as additional security for the Bonds at any time outstanding hereunder. Each such supplemental indenture shall be in form satisfactory to the Trustee, but the Trustee shall not be responsible for the validity thereof or of the lien or charge thereby purported to be created.

Section 13.03. Any request, direction or other instrument provided in this Indenture to be signed or executed by the



holders of Bonds may be in any number of writings of similar tenor and may be signed or executed by such holders in person or by agent appointed in writing. Proof of the execution of any such request, direction or other instrument, or of the writing appointing any such agent, or of the ownership of any Bond, if made in the manner herein set forth, shall be sufficient for any of the purposes of this Indenture and shall be conclusive in favor of the Trustee with respect to any action taken by it under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer of any jurisdiction who by law has power to take acknowledgments of deeds within such jurisdiction, that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of a witness of such execution.

(b) The fact of the holding of any Bond transferable by delivery or any coupon and the number thereof and the date of holding the same may be proved by a statement executed by any trust company, bank, bankers or other depository, wherever situated, if such statement shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with or exhibited to [fol. 110] such trust company, bank, bankers, or other depository the Bond or coupon described in such statement; provided, however, that the Government may make such proof by means of a written statement signed in its name by any official or agent of the Government.

(c) The ownership of Bonds registered as to principal shall be proved by the books of registration herein provided for.

Section 13.04. All of the covenants, stipulations, promises, undertakings and agreements herein contained on behalf of the Authority shall bind and/or relate to its respective successors and assigns, whether so expressed or not.

Section 13.05. All Bonds, when purchased by the Trustee hereunder or otherwise paid or discharged, together with all unmatured coupons appertaining thereto, shall immediately upon such purchase, payment or discharge, be cancelled by the Trustee. All Bonds and coupons so purchased,

paid or discharged and cancelled by it shall be held for the account of the Authority, and no Bonds or coupons shall be issued in exchange therefor or in lieu thereof.

Section 13.06. This Indenture may be amended in any respect by agreement between the Authority and the Trustee with the consent of the holders of 75% of the outstanding Bonds; provided, however, that no such amendment shall permit a change of the maturity of any Bond issued hereunder or a reduction in the rate of interest thereon or in the amount of the principal obligation thereof or in the amount of the redemption premium payable in case of the redemption thereof, or any other modification in the terms of payment of such principal or interest, without the written consent of the holder of such Bond.

Section 13.07. This Indenture may be simultaneously executed in several counterparts, all of which shall constitute one and the same instrument, but in making proof of any counterpart hereof it shall not be necessary to produce or prove the execution of any other counterpart.

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In Witness Whereof, the parties hereto have executed this  
Indenture as of the day and year first above written but ac-  
tually on May 10....., 1938.

GRAND RIVER DAM  
AUTHORITY,

(Seal)

Attest:

*[Signature]*  
By *[Signature]* Chairman of the Board.

Secretary.

Witnesses to the execution here-  
of by or on behalf of Grand  
River Dam Authority:

*[Signature]*  
*[Signature]*

THE FIRST NATIONAL  
BANK OF MIAMI,  
OKLAHOMA

(Seal)

Attest:

By *[Signature]* President.

*[Signature]*

Cashier.

Witnesses to the execution here-  
of by or on behalf of The First  
National Bank of Miami, Okla-  
homa:

*[Signature]*

*[Signature]*

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[fol. 112] STATE OF OKLAHOMA,  
County of Craig, ss:

Before me, Francis Nichols, a Notary Public within and for the said County and State, on this 10 day of May, 1938, personally appeared Ray McNaughton, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument; as the Chairman of its Board of Directors, and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Witness My Hand and official seal the day and year last above written.

Francis Nichols, Notary Public.

My commission expires: 1-5-42.

STATE OF OKLAHOMA,  
County of Ottawa, ss:

Before me, Francis Nichols, a Notary Public within and for said County and State, on this 11 day of May, 1938, personally appeared Roy T. Wills, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President, and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Witness My Hand and official seal the day and year last above written.

Francis Nichols, Notary Public.

My commission expires: 1-5-42.

[fol. 113] CERTIFICATE

STATE OF OKLAHOMA,  
County of Craig, ss:

I, Owen L. Butler, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River Dam Authority, do hereby certify as follows:

1. Attached hereto is an executed counter-part of an indenture dated as of April 1, 1938 executed by the Grand River Dam Authority through its proper officers and by the First National Bank of Miami, Oklahoma, as Trustee, through its proper officers, to secure the payment of the principal of and interest on the Grand River Dam Authority 4% Revenue Bonds of like date and in an aggregate authorized principal amount of \$12,500,000.00.

2. The attached executed counter-part of said indenture is identical in form and terms with the form of indenture which was presented to the Board of Directors of the Grand River Dam Authority at the meeting of said Board held on the 10th day of May, 1938, which form was marked Exhibit "Z" and initialed by myself as Secretary of the Authority for identification, and which by resolution of the Board adopted at said meeting was authorized to be executed, acknowledged and delivered on behalf of said Authority.

3. A certified copy of said indenture as executed, which was identical in form and terms as the attached executed counter-part, was submitted to the Attorney-General of the State of Oklahoma as a part of the record proceedings upon which his opinion approving the \$12,500,000.00 of bonds secured by said indenture as having been regularly and legally issued in accordance with the constitution and laws of the State of Oklahoma was based.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 14 day of March, 1939.

Owen L. Butler, Secretary.

[fol. 114]

#### EXHIBIT B

#### Certificate of Executive Officer

I, J. J. Madigan, do hereby certify as follows:

(1) That I am the duly appointed Executive Officer of the Public Works Administration, Federal Works Agency, and that by virtue of my office I am the proper custodian of the records of said Public Works Administration, Federal Works Agency,

(2) That I have compared the annexed copies of



Grant Offer dated October 16, 1937 by the United States of America to the Grand River Dam Authority, Vinita, Oklahoma, and

Terms and Conditions, P.W.A. Form No. 230, dated September 15, 1937, and

Waiver dated January 12, 1938, to be attached to Offer made by the United States of America to the Grand River Dam Authority, Vinita, Oklahoma, dated October 16, 1937, and accepted October 16, 1937 (Docket No. Okla. 1097-DS), and

Waiver dated April 19, 1938, to be attached to the Offer made by the United States of America to Grand River Dam Authority, Vinita, Oklahoma, dated as of October 16, 1937, and accepted as of October 16, 1937 (Docket No. Okla. 1097-P-DS), and

Waiver dated May 6, 1938, to be attached to Offer made by the United States of America to Grand River Dam Authority, Oklahoma, dated as of October 16, 1937, and accepted as of October 16, 1937 (Docket No. Okla. 1097-P-DS), and

Waiver dated June 6, 1938, to be attached to Offer made by the United States of America to Grand River Dam Authority, Oklahoma, dated as of October 16, 1937, and accepted as of October 16, 1937 (Docket Okla. 1097-P-DS), and

Memorandum of Approval of Variations from Offer dated August 1, 1938, concerning Docket No. Okla. 1097-P-DS), and

Conformed copy of Memorandum of Approval of Variations from Offer dated August 1, 1938, concerning Docket No. Okla. 1097-P-DS, and

[fol. 115] Waiver dated October 11, 1938, to be attached to Offer made by the United States of America to Grand River Dam Authority, Oklahoma, dated as of October 16, 1937, and accepted as of October 16, 1937 (Docket Okla. 1097-P-DS), and

Waiver dated December 30, 1938, to be attached to Offer made by the United States of America to Grand River Dam Authority, Oklahoma, dated as of October 16, 1937, and accepted as of October 16, 1937 (Docket No. Okla. 1097-P-DS), and

Waiver dated February 9, 1939, to be attached to Offer made by the United States of America to Grand River Dam Authority, Oklahoma, dated as of October 16, 1937,

and accepted as of October 16, 1937 (Docket No. Okla. 1097-P-DS), and

Waiver dated April 11, 1939, to be attached to Offer made by the United States of America to Grand River Dam Authority, Oklahoma, dated as of October 16, 1937, and accepted as of October 16, 1937 (Docket No. Okla. 1097-P-DS), and

Memorandum of Approval of Variations from Offer dated January 12, 1940, concerning Docket No. Okla. 1097-P-DS, and

Conformed copy of Memorandum of Approval of Variations from Offer dated January 12, 1940, concerning Docket No. Okla. 1097-P-DS, and

Waiver dated January 16, 1940, to be attached to Offer made by the United States of America to Grand River Dam Authority, Oklahoma, dated as of October 16, 1937, and accepted as of October 16, 1937 (Docket No. Okla. 1097-P-DS),

the originals of which are on file in the records of my office, and the same are true and correct copies thereof and of the whole of said originals and

(3) That the Public Works Administration, Federal Works Agency, has no seal.

In Witness Whereof I have hereunto set my hand this eighteenth day of March, nineteen hundred and forty.

J. J. Madigan, Executive Officer. Public Works Administration, Federal Works Agency.

[fol. 116]

EXHIBIT "B" TO COMPLAINT

Federal Emergency Administration of Public Works

Washington, D. C., Oct. 16, 1937.

Docket No. Okla. 1097-P-DS

Grand River Dam Authority,  
Vinita, Oklahoma.

1. Subject to the Terms and Conditions (PWA Form No. 230) which are made a part hereof, the United States of America hereby offers to aid in financing the construction of a dam to provide water storage for the purpose of

flood control and of hydroelectric power development, together with a hydroelectric generating plant and transmission lines, including necessary equipment and the acquisition of the necessary lands and rights of way therefor (herein called the "Project"), by making a grant to Grand River Dam Authority (herein called the "Applicant") in the amount of 45 percent of the cost of the Project upon completion, as determined by the Federal Emergency Administrator of Public Works (herein called the "Administrator") but not to exceed, in any event, the sum of \$8,437,000, and by purchasing, at the principal amount thereof plus accrued interest thereon, from the Applicant, obligations of the description set forth below (or such other description as shall be mutually satisfactory) in the aggregate principal amount of \$11,563,000, out of an authorized issue of \$12,500,000:

- (a) Obligor: Grand River Dam Authority;
- (b) Type: Negotiable, special obligation, water and electric power revenue, serial, coupon bond;
- (c) Denomination: \$1,000;
- (d) Date: October 1, 1937;
- (e) Interest rate and interest payment dates: 4 percent per annum, payable semi-annually on April 1 and October 1 in each year;
- (f) Place of payment: At the office of the Trustee hereinafter mentioned or (at the option of the holder) at a bank or trust company in the Borough of Manhattan, City and State of New York;
- [fol. 117] (g) Registration privileges: As to principal only;
- (h) Maturities: On October 1 in amounts and years as follows:

- \$63,000 in 1942,
- 100,000 in 1943 to 1946, inclusive,
- 200,000 in 1947 to 1950, inclusive,
- 300,000 in 1951 to 1955, inclusive,
- 400,000 in 1956 to 1960, inclusive,
- 500,000 in 1961 to 1965, inclusive,
- 600,000 in 1966 to 1971, inclusive,
- 700,000 in 1972.

- (i) Redemption provisions, if any: Redeemable in the inverse order of maturities, at the option of the Applicant, in whole or in part (selection as between bonds of the same

maturity to be by lot) on any interest payment date after not less than 30 days' published notice, at a redemption price equal to the principal amount and accrued interest, plus a premium of  $\frac{1}{4}\%$  of such principal amount for each year or fraction thereof from the redemption date to the date of maturity, such premium, however, not to exceed 5% of such principal amount;

(j) Payable as to both principal and interest from and secured by a first pledge of the gross income and revenues of the Applicant, from whatever source derived, including the gross income and revenues from the Project and all improvements, replacements, renewals and extensions thereof, and additions thereto (all such income and revenues of the Applicant to be set aside in a special fund to be used for the payment of reasonable and proper expenses of maintenance and operation and the principal of and interest on the bonds and for other proper corporate purposes), and issued under and additionally secured by an indenture and deed of trust from the Applicant to a bank or trust company satisfactory to the Administrator, as Trustee, said indenture to be in form satisfactory to the Administrator and to provide for the issuance of not exceeding \$12,500,000 principal amount of bonds maturing as follows:

\$70,000 in 1942,  
 110,000 in 1943 to 1946, inclusive,  
 210,000 in 1947 to 1950, inclusive,  
 320,000 in 1951 to 1955, inclusive,  
 430,000 in 1956 to 1960, inclusive,  
 540,000 in 1961 to 1965, inclusive,  
 650,000 in 1966 to 1971, inclusive, and  
 800,000 in 1972.

[fol. 118] 2. This Offer is made subject to the following special conditions:

(a) Anything in this Offer or in said Terms and Conditions to the contrary notwithstanding; the United States of America shall be under no obligation to take up and pay for any of the obligations herein described or to make any payment on account of the said Grant unless and until

First the Applicant shall have satisfied said Administrator, in such manner (whether by judicial determination



or otherwise) as the Administrator may deem advisable, as to the validity and constitutionality of the Grand River Dam Authority Act and all amendments thereto (including specifically Article 1 and Article 2 of Chapter 70 of the Session Laws, 1937, of the State of Oklahoma), as to the validity of the organization of the Applicant and its power to construct and operate the Project as proposed, as to the validity of the proceedings for the authorization, issuance and proposed sale of the said obligations, and the validity of the obligations themselves and the covenants and agreements of the Applicant contained in said obligations and in the proceedings for their authorization, issuance and sale and as to the validity of the contract between the Applicant and the United States of America to be created by the acceptance of . . . offer, including in all cases, specific determinations of such questions concerning the foregoing as the Administrator or his counsel may present;

Second the Applicant shall submit such further data as the Administrator may require to confirm the estimates of cost set forth in the amended application of the Applicant, and showing that the final cost of the Project, including generating facilities with a sufficient capacity to liquidate the loan, will not exceed \$20,000,000;

Third the Administrator shall be satisfied as to the extent and validity of the water rights of the Applicant, including the right of the Applicant to store the necessary waters for the operation of the Project, and to use such waters for irrigation and for the development of electric energy;

(b) No additional funds, whether from the Federal Emergency Administration of Public Works or from any other department, bureau or agency of the Federal Government, will be requested by or on behalf of the Applicant in connection with the Project or any subsequent additions or improvements thereto;

(c) The cost of all lands, rights of way and easements shall be excluded from the cost of the Project for the purpose of computing the Grant, and the Applicant shall submit evidence satisfactory to said Administrator that such lands, rights of way and easements as are required for the construction and operation of the Project can be purchased or acquired at a cost not to exceed \$1,250,000;

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(d) No payments shall be made to the Grand-Hydro Interests, so-called, from any funds made available by the United States of America, except payments for such lands as may be required for the Project, the cost of which lands shall be subject to the approval of the Administrator;

(e) The Applicant will begin work on the Project as early as possible but in no event later than January 1, 1938, and will complete the Project with all practicable dispatch, and in any event by July 1, 1939;

(f) The Administrator may designate a Project Engineer and a Project Auditor as his representatives on the Project and may require that no disbursements shall be made from the Construction Account except such as the Project Engineer shall certify to be in accordance with the Certificate of Purposes previously filed with and accepted by the Government and to be reasonable in amount. If the Administrator shall so request, the Applicant will pay the salaries and expenses of the Project Engineer and Project Auditor;

(g) The Applicant will submit estimates of all proposed expenditures for periods of not less than three months each, which shall be approved by the Administrator; and

(h) The Applicant shall appoint a General Manager who shall have charge of the construction of the Project and who shall at all times during the construction period be satisfactory to the Administrator.

UNITED STATES OF AMERICA

Federal Emergency Administrator  
of Public Works

By *[Signature]*  
For the Administrator.



**FEDERAL EMERGENCY ADMINISTRATION  
OF PUBLIC WORKS**

Harold L. Ickes, Administrator

**TERMS  
AND CONDITIONS**



**SEPTEMBER 15, 1937**

**UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON: 1937**

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[Vol. 121]

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#### [fol. 123] Part I—General Terms and Conditions

1. Prerequisites to Government's Obligation.—The United States of America (hereinafter referred to as the "Government") shall be under no obligation to the applicant to whom the offer is made (hereinafter referred to as the "Applicant") to take up and pay for any obligations which it offers to purchase (hereinafter referred to as the "Bonds") or to make any grant:

(a) Representations.—If any representation made by the Applicant in its application or in any supplement thereto or amendment thereof, or in any document submitted to the Government by the Applicant, shall be incorrect or incomplete in any material respect;

(b) Financial Condition.—If, in case the Government has offered to purchase Bonds, the financial condition of the Applicant shall have changed unfavorably in a material degree from its condition as theretofore represented to the Government;

(c) Cost of Project.—If it appears that the Applicant will not be able to complete the project described in the Government's offer (hereinafter referred to as the "Project") for the sum allotted by the Government, or that the



Applicant will not be able to obtain funds necessary to complete the Project;

(d) Legal Matters.—If, in case the Government has offered to purchase Bonds, the bond transcript shall not show that such Bonds are binding and legal obligations; and if, in all cases, proper disposition shall not have been made of all legal questions affecting the application for a loan or grant or both, the Project, and the construction thereof;

(e) Governor's Letter.—If, in case the Government has offered to purchase Bonds, the Governor of the State in which the Applicant is located shall not write a letter to the Federal Emergency Administrator of Public Works (hereinafter referred to as the "Administrator") to the effect that if, in the judgment of the Administrator, it may be advisable to enact legislation to remedy any defects, illegalities, or irregularities in the proceedings of the Applicant relative to the Bonds or to validate the issuance of said Bonds, said Governor will recommend and cooperate in the enactment of such legislation;

(f) Water Supply.—If, in case the Government has offered to purchase Bonds payable in whole or in major part from the revenues of a Project which includes a water supply or water distribution system, the Applicant shall not have shown that the Project will have a proper and adequate water supply;

(g) Service Rates.—If, in case the Government has offered to purchase Bonds payable in whole or in major part from revenues to be derived from the Project or the system of which it is a part, the Applicant shall not have adopted proper legal proceedings in accordance with State or Territorial law fixing rates to be charged for the facilities and services afforded by the Project or the system of which it is a part, and providing regulations as to the collection of such charges and as to the use of the facilities and services afforded by the Project or the system of which it is a part;

(h) Undue Delay.—If the Applicant shall delay for an unreasonable time acceptance of the offer from the Government to aid in financing the construction of a Project by a [fol. 124] loan and grant, grant only, or loan only (hereinafter referred to as the "Offer") or performance of any of the duties or obligations to be performed by it under the Offer and the terms and conditions;

(i) Compliance.—If the Applicant shall not have complied with all the provisions contained or referred to in the Offer and the terms and conditions theretofore to be complied with by the Applicant;

(j) Plans and Specifications and Certificate of Purposes.—If the Applicant shall not have filed with the Government plans and specifications for the Project, and a certificate or certificates of purposes setting out in detail the amounts and purposes of the expenditures which the Applicant proposes to make in connection with the Project, and the Government shall not have accepted such plans and specifications and such certificate or certificates of purposes as showing that the Project will be constructed in a sound, economical, and efficient manner so as to provide reasonable security for the loan to be made by the Government (in case the Government has offered to purchase Bonds), and so as to comply in all respects with all applicable Federal Statutes, the Offer, and the terms and conditions;

(k) Architectural or Engineering Supervision and Inspection.—If the Applicant shall not provide and maintain competent and adequate architectural or engineering supervision and inspection of the construction of the Project.

2. Expenses.—The Government will be under no obligation to pay any costs, charges, and expenses incident to compliance with any of the duties or obligations of the Applicant.

3. Interest of Member of or Delegate to Congress.—No Member of or Delegate to the Congress of the United States of America will be allowed to participate in the funds made available for the construction of the Project or in any benefit arising therefrom.

4. Bonus or Commission.—The Applicant will not pay any bonus or commission for the purpose of obtaining an approval of the application for a loan or grant.

5. Information.—Upon request at any time, in case the Government purchases any Bonds, the Applicant will furnish the Government, and any purchaser from the Government of 25 per cent of the Bonds, with such financial statements and other information and data relating to the Applicant as the Administrator or any such purchaser may at any time reasonably require.

6. Bond Circular.—The Applicant will furnish all such information in proper form for the preparation of a bond circular and will take all such steps as the Government or any purchaser or purchasers from the Government of not less than 25 per cent of the bonds may reasonably require to aid in the sale by the Government or by any such purchaser or purchasers of any or all of the bonds.

7. Use of Government's Name.—In case the Government offers to purchase Bonds, the Applicant will not refer to the Offer or to any purchase by the Government of any Bonds pursuant to the Offer as an inducement for the purchase of any securities of the Applicant (including Bonds repurchased from or redelivered by the Government) and will not authorize any purchaser from the Applicant of any such securities to do so.

8. Insurance on Completed Project.—In case the Government has purchased Bonds, the Applicant will carry reasonable and adequate insurance upon the completed Project or any completed part thereof accepted by the Applicant or the system of which the Project is a part.

[fol. 125] 9. Other Financial Aid from the Government.—If the Applicant shall receive any funds (other than those received under the terms of the Offer), directly or indirectly, from the Government, or any agency or instrumentality thereof, to aid in financing the construction of the Project, to the extent that such funds are so received the grant will be reduced, and in case the Government has offered to purchase Bonds, to the extent that such funds so received exceed the grant set forth in the Offer, the aggregate principal amount of Bonds to be purchased by the Government will be reduced.

10. Expenses Prior to Offer.—The Government assumes no obligation to pay any grant on any portion of the Project on which costs have been incurred by the Applicant prior to the date of the Offer, regardless of whether or not the Applicant, at the time of incurring such costs, relied on the possibility of a grant being subsequently obtained from the Government to aid in financing the Project. If reimbursement for such costs is requested by the Applicant in its certificate of purposes, such costs will be explained in detail.

11. State or Territorial Law.—Anything in the Offer or the terms and conditions to the contrary notwithstanding, nothing herein shall require the Applicant to observe or enforce compliance with any provision hereof, perform any other act or do any other thing in contravention of any applicable State or Territorial law: Provided, That if any of the provisions of the Offer or the terms and conditions violates any State or Territorial law, or if compliance with the provisions of the Offer or the terms and conditions would require the Applicant to violate any State or Territorial law, or if because of any other reason the Applicant cannot comply with any of such provisions, the Applicant will at once notify the Administrator in writing in order that appropriate changes and modifications may be made by the Administrator and the Applicant to the end that the Applicant may proceed as soon as possible with the construction of the Project.

[fol. 126] Part II—Grant and Bond Payments

Terms and Conditions

1. Advance Grant.—At any time after the acceptance by the Applicant of the Offer, the Applicant may request an advance on account of the grant in an amount not exceeding 15 per cent of the previously approved estimated cost of the Project. This advance grant may be used for paying architectural, engineering, and planning fees, costs of surveys, borings, and other preliminary investigations, costs of preparation of plans, specifications, and other forms of proposed contract documents, costs of advertisements for bids for contracts, construction costs, and the printing of the Bonds. Such advance grant will not be used in payment of legal fees or of the costs of acquisition of lands, easements, or rights-of-way. The request for this advance grant must be accompanied by a signed certificate of purposes in which must appear in reasonable detail the purposes for which such advance grant will be used. If the Project, to aid in the financing of which the Government has made an advance grant, is abandoned, the unused advance grant proceeds will be returned to the Government, but nothing herein shall be construed to waive any right which the Government may have to the return of the entire advance grant if the Applicant shall have acted in bad faith or made



any misrepresentations concerning the completion of the Project or the use of the advance grant.

2. Payment for Bonds.—A requisition requesting the Government to take up and pay for the Bonds will be honored as soon as possible after such Bonds are ready for delivery, if the bond transcript and other documents necessary to support such requisition are complete. At the option of the Government, all the Bonds will be taken up and paid for at one time where the Offer provides for the purchase of Bonds in an aggregate principal amount of not more than \$1,000,000. In all other cases, the Bonds will be taken up and paid for in more than one installment and each installment, in so far as possible, will be for an aggregate principal amount of not less than \$1,000,000.

3. Intermediate Grant Requisitions.—(a) Loans and Grants.—In case the Government is to purchase Bonds, simultaneously with the delivery of the Bonds to and payment for the Bonds by the Government, or where Bonds are taken up and paid for in more than one installment, simultaneously with the delivery of and payment for the final installment, or at any subsequent time, if the Applicant has filed a requisition and if such requisition is accompanied by a signed certificate of purposes showing in reasonable detail the purposes for which the funds will be used and that such funds will be used for items properly included as part of the cost of the Project, the Government will make a grant of an amount representing the difference between any advance grant previously made and an amount equal to 25 per cent of said previously approved estimated cost of the Project. When the Project shall be approximately 70 per cent completed, as determined by the Administrator, the Government will honor a requisition for a second intermediate grant in an amount equal to the difference between the aggregate amount of grant payments theretofore made and 35 per cent of said previously approved estimated cost of the Project. To the end that payment of such second intermediate grant requisition may be expedited, the Applicant may file such requisition when the Project is approximately 50 per cent completed.

No intermediate grant requisition will be honored if the Applicant shall not have deposited in the Construction Account (hereinafter described) such sums as may have

been required in the Offer to be so deposited in addition to the funds made or to be made available by the Government.

(b) Grants Only.—In case the Government is to make a grant only, at any time after the Applicant has deposited in the Construction Account its share of the cost of the Project (herein called "Applicant's Funds"), if the Applicant has so requisitioned and if such requisition is accompanied by a signed certificate of purposes in which appear in reasonable detail the purposes for which the funds will be used, the Government will make a grant of an amount representing the difference between the advance grant, if any, and an amount equal to 25 per cent of said previously approved estimated cost of the Project. When the Project shall be approximately 50 per cent completed the Applicant may file its second intermediate grant requisition for an amount equal to the difference between the aggregate amount of grant payments theretofore made and 35 per cent of said previously approved estimated cost of the Project, but said second intermediate grant requisition will not be honored until the Project is approximately 70 per cent completed, as determined by the Administrator.

(c) In General.—Intermediate grant requisitions in all cases will be honored only if the documents necessary to support such requisitions are complete and work on the Project has progressed in accordance with the provisions of the Offer and the terms and conditions.

4. Final Grant Payment.—At any time after the completion of the Project, the Applicant may file a requisition requesting a final grant payment which, together with all previous payments on account of such grant, shall be an amount not in excess of 45 per cent of the actual cost of the Project, as determined by the Administrator, but not to exceed, in any event, the amount of the grant set forth in the Offer. The final grant requisition will be honored if the documents necessary to support it are complete and work on the Project has been completed in accordance with the Offer and the terms and conditions.

In the determination of the final grant payment, costs or charges of a continuing nature not incurred by the Applicant specifically for the Project will not be allowed.

5. Construction Account.—A separate account or accounts (herein collectively referred to as the "Construction Account") will be set up in a bank or banks which are mem-

bers of the Federal Deposit Insurance Corporation. The advance grant payment, the intermediate grant payments, the proceeds from the sale of the Bonds (exclusive of accrued interest), Applicant's Funds, the final grant payment and any other moneys which shall be required in addition to the foregoing to pay the cost of constructing the Project will be deposited in the Construction Account promptly upon the receipt thereof. All accrued interest paid by the Government at the time of delivery of any Bonds will be paid into a separate account (herein referred to as the "Bond Fund"). Payments for the construction of the Project will be made only from the Construction Account.

6. Disbursement of Moneys in Construction Account.—Moneys in the Construction Account will be expended only for such purposes as shall have been previously specified [fol. 128] in a signed certificate of purposes filed with and accepted by the Government. After all costs incurred in connection with the Project have been paid, if any Bonds are then held by the Government, all moneys remaining in the Construction Account will be used to repurchase Bonds or will be transferred to the Bond Fund.

7. Use of Moneys in Bond Fund.—Moneys in the Bond Fund will be expended solely for the purpose of paying interest on and principal of Bonds.

[fol. 129] Part III—Change from Loan and Grant to Grant Only

1. Terms and Conditions Applicable to Loans and Grants and Grants Only.—

(a) The terms and conditions are applicable in cases where the Government has offered to make a loan and a grant or to make a grant only or to make a loan only. If the Offer is for a loan only, the provisions of the terms and conditions relating to grants shall have no application.

(b) If, after the Applicant has accepted the Offer to make a loan and a grant, the Applicant determines to sell all the Bonds to purchasers other than the Government on terms at least as favorable as those offered by the Government, the Applicant may do so without obtaining the Government's consent thereto.

(c) If, before or after the Government has honored the



first loan requisition, the Applicant determines to sell to purchasers other than the Government a portion of the Bonds, the consent of the Administrator to such sale will first be obtained to the end that the maturities of the Bonds to be purchased by the Government shall be satisfactory to the Administrator.

(d) If, after the Applicant has accepted the Offer to make a loan and a grant, a grant only is desired because the Applicant has sold the Bonds to purchasers other than the Government or has otherwise provided its share of the cost of the Project, the Applicant will immediately notify the Administrator, and the Offer to make a loan and grant will remain effective for a grant only, and the terms and conditions will remain equally applicable.

[fol. 130] Part IV—Construction Terms and Conditions

1. Prerequisites to Government's Obligation.—The Government shall be under no obligation to the Applicant to take up and pay for any Bonds or to make any grant:

(a) Submission to State Director.—If the Applicant shall not submit to the State Director of the Federal Emergency Administration of Public Works, his duly authorized representative, or any other person designated by the Administrator to perform the duties and functions of the State Director (hereinafter referred to as the "State Director"):

(1) two copies of proposed contract documents relating to the Project, before bids are invited for the particular contract;

(2) all proposed wage rate determinations referred to in the second sentence of Paragraph 9 of this Part IV, before such determinations are made;

(3) a written statement concerning the proposed award of each contract relating to the Project, before an award is made;

(4) all sets of executed contract documents relating to the Project and four sets of conformed copies thereof, before any work, service, material or equipment is performed or furnished thereunder;

(5) a written statement concerning the proposed award of each subcontract relating to the Project, before the award thereof is approved;



(6) a written statement concerning the proposed assignment of any interest in or part of any contract relating to the Project, before an assignment thereof is approved;

(7) a written statement concerning each proposed extra, change, or additional work order intended to affect any contract relating to the Project before such order is issued;

(8) a written statement concerning, and the pertinent plans and specifications for, any work for which the Administrator has waived the applicable provisions of the terms and conditions so as to permit the Applicant to perform such work otherwise than by contract, before such work is so performed;

(9) all proposed decisions referred to in the second sentence of Paragraph 10 of this Part IV, except decisions by the Board of Labor Review, before such decisions are made:

(10) a written statement concerning each architect or engineer whom the Applicant proposes to employ on the Project, before such architect or engineer is employed, together with one certified copy of each ordinance, resolution, order, or contract by which each architect or engineer is employed by the Applicant for work upon or in connection with the Project; and

(11) such other data, reports, records, and documents relating to the Project as the State Director may require;

in order that the State Director may examine the same and promptly advise the Applicant whether, in his opinion, the same are in compliance with applicable Federal statutes, the Offer, and the terms and conditions;

[fol. 131] (b) Procedure after Submission.—If the Applicant, after having submitted to the State Director the matters mentioned in sub-Paragraph (a) of this Paragraph, shall have proceeded without having been advised by the State Director to do so;

(c) Undue Delay in Construction.—If the Applicant shall not cause the construction of the Project to be commenced and continued with all practicable dispatch in a sound and efficient manner and in accordance with the plans and specifications;

it being the purpose of sub-Paragraphs (a) and (b) of this Paragraph to insure that the Applicant will be fully advised

before it takes any step which might, in the opinion of the State Director, violate applicable Federal statutes, the Offer, or the terms and conditions, and to eliminate thereby the possibility that the Applicant will be responsible for a violation which would render it impossible for the Government to make the grant or loan or which might otherwise result in a delay in the construction of the Project.

2. Construction by Contract.—All work on the Project will be done under contract. The Applicant will give every opportunity for free, open, and competitive bidding for each and every construction, material, and equipment contract. The Applicant will give such publicity to advertisements or calls for bids by it for the furnishing to it of work, labor, materials, and equipment as will provide adequate competition and the award of each contract therefor will be made to the lowest responsible bidder as soon as practicable: Provided, That in the selection of equipment or materials the Applicant may, in the interest of standardization or ultimate economy, if the advantage of such standardization or such ultimate economy is clearly evident, award a contract to a responsible bidder other than the lowest in price.

3. Contract Security.—The Applicant will require that each construction contractor shall furnish a bond in an amount at least equal to 100 per cent of his contract price as security for the faithful performance of his contract and for the payment of all persons performing labor and furnishing materials in connection therewith: Provided, That if applicable State or Territorial law requires a separate bond for the protection of laborers and materialmen, the Applicant will require that each such contractor shall furnish a bond in the amount above-stated for the faithful performance of his contract and a separate bond in an amount at least equal to 50 percent of his contract price for the payment of all persons performing labor and furnishing materials in connection with his contract.

4. Contractors' Insurance.—The Applicant will require that each construction contractor shall maintain during the life of his contract, insurance as follows:

(a) Compensation Insurance.—Adequate Compensation Insurance for all of such contractor's employees who will be engaged in work at the site of the Project and if any part

of such contractor's contract is sublet, the contractor will require his subcontractor to maintain such insurance for all of the subcontractor's employees who will be so engaged unless the latter's employees are protected by the principal contractor's Compensation Insurance.

(b) Liability Insurance.—Adequate Public Liability and Property Damage Insurance to protect such contractor and all of his construction subcontractors from claims for damages for personal injury, accidental death, and to property, which may arise from operations under his contract, whether such operations be by himself or by any such subcontractor or by anyone directly or indirectly employed by either of them.

[fol. 132] 5. Qualifications for Employment.—The Applicant will require that no person under the age of sixteen (16) years and no convict labor shall be employed on the Project. The Applicant will require that no person whose age or physical condition is such as to make his employment dangerous to his health or safety or to the health and safety of others shall be employed on the Project: Provided, That this shall not operate against the employment of physically handicapped persons, otherwise employable, where such persons may be safely assigned to work which they can ably perform. The Applicant will require that there shall be no discrimination because of race, creed, color, or political affiliations, in the employment of persons for work on the Project. The Applicant will require that all employees engaged in work on the Project shall have the right to organize and bargain collectively through representatives of their own choosing, and that such employees shall be free from interference, restraint, and coercion of employers in the designation of such employees' representatives, in self-organization, and in other concerted activities of such employees, for the purpose of collective bargaining or other mutual aid or protection, and that no person seeking employment on the Project and no person employed thereon shall be required as a condition of initial or continued employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of such person's own choosing.

6. Labor Preference and Employment Services.—The Applicant will require that with respect to all skilled, semi-skilled, and unskilled workers employed on the Project:

(a) Preference in employment shall be given to persons from the public relief rolls where such persons are available and qualified to perform the work to which the employment relates, and

(b) To the fullest extent possible workers required for the Project and appropriate to be secured through employment services shall be chosen from the list of qualified workers submitted by local employment agencies designated by the United States Employment Service: Provided, That union workers, skilled, semi-skilled, and unskilled, shall not be required to register at such local employment agencies but, if such workers are desired by the employer, they shall be obtained through union locals in a customary manner which will insure compliance with subparagraph (a) of this Paragraph 6. In the event, however, that employers who wish to employ union workers are not furnished with qualified workers by the union locals within 48 hours (Sundays and holidays excluded) after request is filed by the employer, all workers shall be chosen from lists of qualified workers submitted by local agencies designated by the United States Employment Service.

7. Nondiscrimination.—The Applicant will require that, except as specifically provided above, workers who are qualified by training and experience and who, as above outlined, are referred for work on the Project, shall not be discriminated against on any grounds whatsoever.

8. Hours of Work.—The Applicant will require that except in—

(a) Emergencies, which are defined as unforeseen occurrences and combinations of circumstances involving the public welfare or the protection of work already done on the Project or which endanger life or property and call for immediate action or remedy; or

(b) Special and unusual circumstances rendering it infeasible or impracticable to require adherence to the applicable limitations of hours herein set forth, skilled, semi-[fol. 133] skilled, and unskilled workers employed upon the Project shall not be permitted to work thereon more than 8 hours per day nor more than 40 hours per week: Provided, That the limitations of hours herein set forth shall not apply



to executive, supervisory, administrative, clerical, or other nonmanual workers<sup>1</sup> as such.

9. Wage Rates.—The Applicant will require that minimum rates for employees in each trade and occupation engaged in work on the Project will be determined as required by applicable State or Territorial law. In the absence of such State or Territorial law, the Applicant will determine; prior to inviting bids for a construction contract, the minimum hourly wage rates for each such trade and occupation under such contract. Such minimum hourly wage rates will be determined (see Paragraph 1 (a) (2) of this Part IV) in accordance with rates prevailing for work of a similar nature in the locality in which the Project is to be constructed. The Applicant will also required that all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned shall be posted at appropriate conspicuous points on the site of the Project. Unless otherwise required by State or Territorial law, wage rates need not be established for executive, supervisory, administrative, clerical, or other nonmanual workers<sup>1</sup> as such.

10. Claims and Disputes Pertaining to Classification of Labor.—Where there is a State or Territorial law requiring the determination of claims and disputes pertaining to the classification of labor employed on the Project, such claims and disputes will be handled in accordance with such law. In the absence of such law, claims and disputes pertaining to the classification of labor employed on the Project will be decided (see Paragraph 1 (a) (9) of this Part IV), by the Applicant: Provided, That instead of such claims and disputes being decided by the Applicant, both the parties concerned may if they so agree and if the Applicant also agrees, submit such claims and disputes to the Administrator who may, in his discretion, refer said claims and disputes to the Board of Labor Review of the Federal Emergency Administration of Public Works for decision.

11. Payment of Employees.—The Applicant will require that each construction contractor and construction subcon-

<sup>1</sup> For example, Camp assistants, cooks, policemen, storekeepers, time-keepers, watchmen, waterboys, and messengers.

tractor shall pay each of his employees engaged in work on the Project in full (less deductions made mandatory by law) in cash and not less often than once each week.

12. **Convict-Made Materials.**—The Applicant will require that no materials manufactured or produced in a penal or correctional institution be incorporated into the Project.

13. **Domestic and Foreign Materials.**—The Applicant will require that only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States of America, and that only such manufactured articles, materials, and supplies as have been manufactured in the United States of America substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States of America, shall be employed in the construction of the Project: Provided, That the Applicant may, if it so desires, request the Administrator to waive the foregoing restrictions so as to permit the purchase of foreign articles, materials, or supplies, if the use of domestic articles, materials, or supplies is impracticable, or if the foreign articles, materials, or supplies are lower in cost after the following differentials are applied in favor of the domestic articles, materials, or supplies:

[fol. 134] (a) On purchases where the price of the foreign articles, materials, or supplies is \$100 or less, a differential of 100 per cent, and.

(b) On purchases where the price of the foreign articles, materials, or supplies is more than \$100, a differential of 25 per cent.

14. **Accident Prevention.**—The Applicant will require that precaution shall be exercised at all times for the protection of persons (including employees) and property, that the safety provisions of applicable laws, building and construction codes shall be observed, and that machinery, equipment, and all hazards shall be guarded or eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable law.

15. **Inspection.**—The Applicant will require that the Administrator and his authorized representatives and agents shall be permitted and will itself permit them, to inspect all

work, materials, pay rolls, records of personnel, invoices of materials, and other relevant data and records and the Applicant will submit, to the Administrator's authorized representative or agent such evidence as to the quality of materials as such representative or agent may require. The Applicant will provide and maintain or will require that there shall be provided and maintained during the construction of the Project adequate facilities at the site thereof for the use of the Administrator's representatives or agents assigned to the inspection of the Project.

16. Signs.—The Applicant will cause to be erected on the site of the Project at points and in positions to be designated by the Administrator's representative or agent assigned to the inspection of the Project, signs in such quantity and of such dimensions as will be designated by the State Director, which signs will bear the legend:

P. W. A.

FEDERAL EMERGENCY

ADMINISTRATION OF PUBLIC WORKS

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(Description of Project)

PROJECT No.—

17. Construction Reports.—The Applicant will require that there shall be submitted to it by each construction contractor and will, in turn, submit to the Administrator's authorized representative or agent, schedules of the costs and quantities of materials and of other items, and that such schedules shall be in such form and shall be supported as to correctness by such of the estimates upon which they are based as such representative or agent may require. The Applicant will also require that there shall be submitted to it by each such contractor and will, in turn, submit as above-stated, the following records on forms to be supplied by the Government:

(a) Detailed Estimate, and (b) Periodical Estimates for Partial Payment.

18. Reports to U.S. Department of Labor.—The Applicant will require that each construction contractor shall

furnish to the United States Department of Labor, as early as practicable, the names and addresses of all his construction subcontractors. The Applicant will also require that each such contractor and subcontractor shall report monthly [fol. 135] to said Department, not later than the 5th day following the close of each calendar month, on forms and in accordance with instructions to be supplied by said Department, the number of persons directly employed under his contract who, during the particular calendar month, were on his pay rolls, the aggregate amount of each of said pay rolls, the man-hours worked, and the total expenditures for materials, which expenditures shall be itemized.

19. Reports to Administrator.—The Applicant will report monthly directly to the Administrator not later than the 5th day following the close of each calendar month, on forms and in accordance with instructions to be supplied by the Government, the total number of persons who were directly employed on the Project during the particular calendar month.

20. Pay Rolls of Contractors and Subcontractors.—The Applicant will require that each construction contractor and each construction subcontractor shall prepare his pay rolls on forms prescribed and in accordance with instructions to be furnished by the Administrator; that not later than the 7th day following the payment of the wages, each such contractor shall transmit to such office as may be designated by said Administrator a certified legible copy and two conformed copies of each such pay roll; that each such pay roll shall be sworn to in accordance with the "Regulations Issued Pursuant to So-Called Kick-Back Statute", which Regulations are set forth in Part V hereof; and that each such contractor and subcontractor shall submit reports on forms as and when required by said Administrator, covering the purchases of and requisitions for materials, together with such other information as may be required to determine the progress and status of work on the Project.

21. Project Data and Records.—Promptly following the preparation of periodical pay rolls of construction contractors and construction subcontractors, the Applicant will furnish the Administrator's authorized representative or agent with such number as may be required of certified copies of such pay rolls, on forms to be supplied by the



Government. Such certified copies of such pay rolls will be accompanied by substantial proof that all bills for services rendered and materials supplied have been duly paid, and by such other data as such representative or agent may require. The Applicant will keep a record of Project costs in accordance with the classification of such costs used by the Administrator. The Applicant will furnish such information and data concerning the construction, cost, and progress of work on the Project (including copies of proposed and executed contract documents) as such representative or agent may require.

22. Payment.—(a) Not later than the 15th day of each calendar month, the Applicant will make partial payment to each construction contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month by the particular contractor, but will retain at least 10 per cent of the amount of each such estimate until final completion and acceptance of all work covered by the particular contract.

(b) The Applicant will require that each such contractor shall pay:

(1) For all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered,

(2) For all materials, tools, and other expendible equipment, to the extent of 90 per cent of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at the site of the Project, and the balance of the [fol. 136] cost thereof not later than the 30th day following the completion of that part of the work in or on which such materials, tools, and equipment are incorporated or used, and

(3) To each of his construction subcontractors, not later than the 5th day following each payment to such contractor, the respective amounts allowed such contractor on account of the work performed by such subcontractors, to the extent of each such subcontractor's interest therein.

23. Naming Project.—The Applicant will not name the Project for any living person.

[fol. 137] Part V.—Kick-Back Statute and Regulations<sup>1</sup>

1. Kick-Back Statute.—The so-called Kick-Back Statute is Public, No. 324, Seventy-third Congress, approved June 13, 1934 (48 Stat. 948), and reads as follows:

An Act To effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever shall induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

Sec. 2. To aid in the enforcement of the above section, the Secretary of the Treasury and the Secretary of the Interior jointly shall make reasonable regulations for contractors or subcontractors on any such building or work, including a provision that each contractor and subcontractor shall furnish weekly a sworn affidavit with respect to the wages paid each employee during the preceding week.

2. Regulations Issued Pursuant to So-Called Kick-Back Statute.—Pursuant to the provisions of Public, No. 324, Seventy-third Congress, approved June 13, 1934 (48 Stat. 948), concerning rates of pay for labor, the Secretary of the Treasury and the Secretary of the Interior have jointly made the following regulations:

Section 1. (This section quotes the Kick-Back Statute.)

Section 2. Each contractor and subcontractor engaged in the construction, prosecution, or completion of any build-

<sup>1</sup> The applicable sections of the Kick-Back Statute and Regulations promulgated pursuant thereto are set forth in the text for the convenience of the Applicant. Section 3 of the Regulations was amended effective April 1, 1937, to read as herein set forth.

ing or work of the United States or of any building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof, shall furnish each week an affidavit with respect to the wages paid each employee during the preceding week. Said affidavit shall be in the following form:

STATE OF ———,  
County ———, ss:

I, — (name the party signing affidavit), — (Title), do hereby certify that I am the employee of — (name of contractor or subcontractor), who supervises the payment of the employees of said contractor (subcontractor); that the attached pay roll is a true and accurate report of the full weekly wages due and paid to each person employed by the said contractor (subcontractor) for the construction of — (project), for the weekly pay roll period from the — day of —, 193—, to the — day of —, 193—; that no rebates or deductions from any wages due any such person as set out on the attached pay roll have been directly or indirectly made, and that, to the best of my knowledge and belief, there exists no agreement or understanding with any person employed on the project, or any person whatsoever, pursuant to which it is contemplated that I or anyone else shall, directly or indirectly, by force, intimidation, threat or otherwise, induce or receive any deductions or rebates in any manner whatsoever from any sum paid or to be paid to any person at any time for labor performed or to be performed under the contract for the above named project.

Sworn to before me this — day of —, 193—.

[fol. 138] Section 3. Said affidavit shall be executed and sworn to by the officer or employee of the contractor or subcontractor who supervises the payment of its employees.

Said affidavit shall be delivered, within seven days after the payment of the pay roll to which it is attached, to the Government representative in charge at the site of the particular project in respect of which it is furnished, who shall forward the same promptly to the Federal agency having control of such project. If no Government representative is in charge at the site, such affidavit shall be mailed within such seven-day period to the Federal agency having control of the project.

Section 4. At the time upon which the first affidavit with respect to the wages paid to employees is required to be filed by a contractor or subcontractor pursuant to the requirements of these regulations, there shall also be filed in the manner required by Section 3 hereof a statement under oath by the contractor or subcontractor, setting forth the name of its officer or employee who supervises the payment of employees, and that such officer or employee is in a position to have full knowledge of the facts set forth in the form of affidavit required by Section 2 hereof. A similar affidavit shall be immediately filed in the event of a change in the officer or employee who supervises the payment of employees. In the event that the contractor or subcontractor is a corporation, such affidavit shall be executed by its president or a vice president. In the event that the contractor or subcontractor is a partnership, such affidavit shall be executed by a member of the firm.

Section 5. These regulations shall be made a part of each contract executed after the effective date hereof by the Government for any of the purposes enumerated in Section 2 hereof.

Section 6. These regulations shall become effective on January-15, 1935.

3. Construction of Regulations.—The clause in the payroll affidavit which reads “ \* \* \* that the attached payroll is a true and accurate report of the full weekly wages due and paid to each person employed by the said contractor \* \* \* ” is construed to mean:

(a) Wages due are the wages earned during the pay period by each person employed by the contractor, less any deductions required by law.

(b) At the time of signing the affidavit, the wages due each employee have either been paid to him in full or are being held subject to claim by him.

(c) Such unpaid wages will be paid in full on demand of the employee entitled to receive them.

The clause “ \* \* \* that no rebates or deductions from any wages due any such person as set out on the attached payroll have been directly or indirectly made ” does not apply to any legitimate deductions mentioned above which enter into the computation of full weekly wages due.



The "Regulations Issued Pursuant to So-Called Kick-Back Statute" shall not be construed to prohibit deductions required by law.

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### Penalty

Section 35 of the Criminal Code, as amended, provides a penalty of not more than \$10,000 or imprisonment of not more than 10 years, or both, for knowingly and willfully making or causing to be made "any false or fraudulent statements \* \* \* or use or cause to be made or used any false \* \* \* account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement \* \* \*" relating to any matter within the jurisdiction of any governmental department or agency.

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W A I V E R

To be attached to Offer made by the United States of America to the Grand River Dam Authority, Vinita, Oklahoma, dated October 16, 1937, and accepted October 16, 1937 (Docket No. Okla. 1097-DS).

JAN 12 1938

Paragraph 2 (e) of the above Offer provides "The Applicant will begin work on the Project as early as possible but in no event later than January 1, 1938, and will complete the Project with all practicable dispatch, and in any event by July 1, 1939;"

The provisions of the above quoted paragraph are hereby waived so far as necessary to permit construction of the Project to start not later than February 1, 1938.

Approved,

*Farbach*

UNITED STATES OF AMERICA

Federal Emergency Administrator  
of Public Works

By *W. H. King*  
Assistant Administrator.

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JCW

W A I V E R

To be attached to the Offer made by the United States of America to Grand River Dam Authority, Vinita, Oklahoma, dated as of October 16, 1937, and accepted as of October 16, 1937 (Docket No. Okla. 1097-P-DS).

APR 19 1938

Paragraph 1 of Part II of the Terms and Conditions (PMA Form No. 230), made a part of the Offer herein, provides that advance grant proceeds will not be used in payment of legal fees.

The Offer herein provides that the Authority shall establish the validity of its proposed bonds by procuring a favorable decision from the Supreme Court of Oklahoma in a test case duly instituted, and further provides that a favorable decision in such test case shall be a condition precedent to the obligation of the Government to purchase any of said proposed bonds. The Authority has duly prosecuted such test case and obtained a favorable decision from the Supreme Court of Oklahoma, but has thereby incurred legal expense to an amount relatively much greater than the expense incurred by an applicant in ordinary circumstances, and has, in the meanwhile, been unable to take any steps preliminary to the authorization and issuance of its bonds, as an applicant in ordinary circumstances is able to do. The Authority responds that to defer, until its bonds can be prepared, issued and sold, the making of payment to its counsel for services by them heretofore rendered, or of reimbursement for expenses by them heretofore incurred, would work an unreasonable hardship.

Such provisions of said Paragraph 1 of said Part II as prevent or tend to prevent the use of advance grant proceeds for the payment of legal fees or expenses are accordingly hereby waived, but nothing herein contained shall be construed as a determination by or on behalf of the Federal Emergency Administrator of Public Works that the amount of such fees or expenses shall or may be included in the cost of the Project for purposes of computing the Grant.

Approved:

UNITED STATES OF AMERICA

Federal Emergency Administrator  
of Public Works

By W. H. Murray  
Assistant Administrator.

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W A I V E R

To be attached to Offer made by the  
United States of America to Grand River  
Dam Authority, Oklahoma, dated as of  
October 16, 1937, and accepted as of  
October 16, 1937 (Docket No. Okla.  
1097-P-DS)

MAY - 6 1938

Paragraph 1 of Part II of the Terms and Conditions (PWA Form No. 230) which are made a part of the Offer herein provides in effect that advance grant proceeds will not be used in payment of the costs of acquisition of lands, easements or rights of way.

In order to maintain its construction schedule, the Applicant has let Contract No. 3, for the construction of a railroad to the dam site, and Contract No. 4, for the construction of a transmission line from Vinita to the dam site. No substantial progress can be made towards constructing the dam until the completion of the work contemplated by Contract No. 3 and Contract No. 4.

Because the Offer herein required the Applicant to establish, in a test case instituted for that purpose, the validity of its Enabling Act, the Applicant was and has been delayed in taking proceedings preliminary to and in connection with the authorization, issuance and sale of its bonds.

It is necessary that lands, easements and rights of way be acquired forthwith for the proposed railroad and the proposed transmission line, and, since the only funds presently available to the Applicant to pay the cost of such acquisition are advance grant proceeds, the provisions of said Paragraph 1 of said Part II which prevent the use of such proceeds for payment of the costs of such acquisition are hereby accordingly waived. Nothing herein contained, however, shall be construed as a waiver of Paragraph 2(c) of the Offer herein or as a determination that the cost of any lands, easements or rights of way may be included in the cost of the Project for purposes of computing the Grant.

Approved:

UNITED STATES OF AMERICA

Federal Emergency Administrator  
of Public Works

*Lawson*

By *M. H. H. H.*  
Assistant Administrator

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JUN -6 1938

To be attached to Offer made by the  
United States of America to Grand River  
Dam Authority, Oklahoma, dated as of  
October 16, 1937, and accepted as of  
October 16, 1937 (Docket Okla. 1097-P-DS).

Paragraph 1 of Part II of the Terms and Conditions (PWA Form No. 230) which are made a part of the Offer herein provides in effect that advance grant proceeds will not be used in payment of the costs of acquisition of lands, easements or rights of way.

In order to maintain its construction schedule, the Applicant has let Contract No. 3, for the construction of a railroad to the dam site, and Contract No. 4, for the construction of a transmission line from Vinita to the dam site. No substantial progress can be made towards constructing the dam until the completion of the work contemplated by Contract No. 3 and Contract No. 4.

Because the Offer herein required the Applicant to establish, in a test case instituted for that purpose, the validity of its Enabling Act, the Applicant was and has been delayed in taking proceedings preliminary to and in connection with the authorization, issuance and sale of its bonds.

It is necessary that lands, easements and rights of way be acquired forthwith for the proposed railroad and the proposed transmission line, and that options be taken upon certain lands or interests therein within the area of the proposed reservoir. It is possible that the Applicant will be compelled to resort to condemnation proceedings to acquire certain of such lands, easements and rights of way. Since advance grant proceeds are the only funds presently available to the Applicant to pay the cost of such acquisition, whether title be acquired by purchase or by condemnation, or the cost of taking options or the administrative expenses of the Applicant's land acquisition department, the provisions of said Paragraph 1 of said Part II which prevent the use of such proceeds for the payment of such costs or expenses are hereby accordingly waived. Nothing in this waiver contained, however, shall be construed as a waiver of Paragraph 2 (c) of the Offer herein or as a determination that the cost

of any lands, easements or rights of way may be included in the cost of the Project for purposes of computing the Grant.

This Waiver shall supplement and supersede the Waiver executed as of May 6, 1938, and shall be retroactively effective as of May 6, 1938.

Approved:

UNITED STATES OF AMERICA

Federal Emergency Administrator  
of Public Works

*Carleton*

By

*W. H. Murray*

Assistant Administrator



**MEMORANDUM OF APPROVAL OF VARIATIONS FROM OFFER**

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Dolet

Docket No. ... Okla., 1997-P-D8

Description in Offer

Description of obligations offered

Dated April 1, 1988, and maturing on April 1 in the amounts specified in each of the years from 1945 to 1978, inclusive.

Because of the lapse of time between the date of the Offer and the date of the Indenture it was deemed advisable to date the bonds as of a date six months later than the date specified in the Offer, and to change all other dates accordingly.

**LEGAL ATTACHMENT Division**

C. R. Larrabee  
Assistant General Counsel

7-11-58

*For the Finance Division (Control Office).*

FEWELSM

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FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

MEMORANDUM OF APPROVAL OF VARIATIONS FROM OFFER

OFFICE OF THE ASSISTANT GENERAL COUNSEL

To: FINANCE SECTION.  
From: LEGAL SECTION Division

August 1, 1938

Subject: Grand River Dam Authority

Docket No. Okla. 1097-P-DS

The above applicant has submitted for our approval obligations which differ in their specifications from those provided in the Government's Offer, dated October 16, 1937, to make a loan and grant to the above applicant, such variations being as follows:

*Description in Offer*

Obligations dated October 1, 1937, and maturing on October 1, in the amounts specified in each year from 1942 to 1972, inclusive.

*Description of obligations offered*

Dated April 1, 1938, and maturing on April 1 in the amounts specified in each of the years from 1943 to 1973, inclusive.

The foregoing variations are proposed for the following reason(s):

Because of the lapse of time between the date of the Offer and the date of the Indenture it was deemed advisable to date the bonds as of a date six months later than the date specified in the Offer, and to change all other dates accordingly.

There is no legal objection to the Government accepting the obligations conforming to the specifications offered. If you approve the variations in the specifications of the obligations offered from the specifications in the Government's Offer, will you please indicate your approval in the space provided below.

LEGAL SECTION Division

By (Sgd) C. E. Larrabee

Approved:

Assistant General Counsel

Approved:

FINANCE SECTION

(Sgd) E. E. Walsh  
For the Finance Division (Central Office)

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To be attached to Offer made by the  
United States of America to Grand River  
Dam Authority, Oklahoma, dated as of  
October 16, 1937, and accepted as of  
October 16, 1937. (Docket Okla. 1097-P-DS).

NOV 11 1938

Paragraph 2 (c) of the Offer herein provides that the cost of all lands, rights of way and easements shall be excluded from the cost of the Project for the purpose of computing the Grant, and that the Applicant shall submit evidence satisfactory to the Administrator that such lands, rights of way and easements as are required for the construction and operation of the Project can be purchased or acquired at a cost not to exceed \$1,250,000.

It now appears that both the amount of land necessary for the Project and the average price per acre at which it could be purchased were seriously underestimated, and it appears further that, if the amount expended for lands, rights of way and easements is excluded from the cost of the Project for the purpose of computing the Grant, the amount of any grant that will be payable will be substantially less than the amount stated in Paragraph 1 of the Offer, with the result that the Proceeds of the sale of the Applicant's obligations and the actual amount to be paid on account of the Grant will be insufficient to complete the Project in accordance with the approved plans and specifications.

Paragraph 2 (c) of the Offer is accordingly hereby waived, but on the understanding and subject to the condition that the amount, if any, to be included in the cost of the Project, for the purpose of computing the Grant, on account of the cost of lands, rights of way and easements, shall not exceed such amount as the Federal Emergency Administrator of Public Works shall deem reasonable nor in any event 15 percent of the cost of the Project upon completion, as determined by said Administrator.

Approved:

UNITED STATES OF AMERICA

Federal Emergency Administrator  
of Public Works

By  Assistant Administrator

W A I V E R

To be attached to Offer made by the  
United States of America to Grand  
River Dam Authority, Oklahoma, dated  
as of October 16, 1937, and accepted  
as of October 16, 1937 (Docket No.  
Okla. 1097-P-DS).

DEC 30 1938

Paragraph 2 (e) of the Offer herein provides "The Applicant will begin work on the Project as early as possible but in no event later than January 1, 1938, and will complete such Project with all practicable dispatch, and in any event by July 1, 1939;"

The provisions of the above quoted paragraph relating to the completion of the Project are hereby waived so far as necessary in order to permit completion of the Project not later than December 31, 1939.

Approved:

UNITED STATES OF AMERICA

Federal Emergency Administrator  
of Public Works

Anal. By *[Signature]*  
Assistant Administrator



W A I V E R

FEB 9 1939

To be attached to Offer made by the  
United States of America to Grand  
River Dam Authority, Oklahoma, dated  
as of October 16, 1937, and accepted  
as of October 16, 1937 (Docket No.  
Okla. 1097-P-DS).

Paragraph 22 of Part IV of the Terms and Conditions (PWA Form No.  
230) provides in part as follows:

"22. Payment. -- (a) Not later than the 15th day of each calendar  
month, the Applicant will make partial payment to each construction con-  
tractor on the basis of a duly certified and approved estimate of the  
work performed during the preceding calendar month by the particular  
contractor, but will retain at least 10 per cent of the amount of each  
such estimate until final completion and acceptance of all work covered  
by the particular contract. . . ."

The above-quoted provisions are hereby waived insofar as necessary  
to permit the Applicant to make partial payment to each construction  
contractor not later than the 20th day of each calendar month.

Approved:

UNITED STATES OF AMERICA

Federal Emergency Administrator  
of Public Works

By

*W. H. H. H.*  
Assistant Administrator

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APR 11 1939

To be attached to Offer made by the United States of America to Grand River Dam Authority, Oklahoma, dated as of October 16, 1937, and accepted as of October 16, 1937 (Docket No. Okla. 1097-P-DS).

Paragraph 3 (a) of Part II of the Terms and Conditions (PWA Form No. 230), which is made a part of the Offer herein, precludes the payment of intermediate grant requisitions prior to the delivery of and payment for the Bonds the Government is to purchase.

It has been shown that funds in addition to the advance grant payment, which has already been made, are urgently needed in order to meet construction costs currently accruing. It will be impossible to consummate the first purchase of bonds to be issued for the Project in time to meet these obligations.

The provisions of Paragraph 3 (a) of Part II of the Terms and Conditions are hereby waived so far as necessary to permit payments on account of the grant not exceeding 20 per centum of the estimated cost of the Project prior to the delivery of and payment for the Bonds the Government is to purchase.

Approved:

UNITED STATES OF AMERICA

Federal Emergency Administrator  
of Public Works

*Carab...*  
Assistant Administrator

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*Bullard 1/4 D*  
*11/16/40*

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

MEMORANDUM OF APPROVAL OF VARIATIONS FROM OFFER

OFFICE OF THE ACTING GENERAL COUNSEL

To: FINANCE ~~SECTION~~ Division  
From: LEGAL ~~SECTION~~ Division. . .

Subject: Grand River Dam Authority

Docket No. Okla. 1097-P-DS

JAN 12 1940

*Okla. 1097*  
*1093593*

The above applicant has submitted for our approval obligations which differ in their specifications from those provided in the Government's Offer, dated October 16, 1937, to make a loan and grant to the above applicant, such variations being as follows:

Description in Offer

Payable as to both principal and interest from and secured by a first pledge of the gross income and revenues of the Applicant, from whatever source derived, including the gross income and revenues from the Project and all improvements, replacements, renewals and extensions thereof; and additions thereto (all such income and revenues of the Applicant to be set aside in a special fund to be used for the payment of reasonable and proper costs of maintenance and operation and the principal of and interest on the bonds and for other proper corporate purposes).

Description of obligations offered

Payable solely from the revenues, income, profits, tolls, rents and returns (hereinafter in the Indenture called "Revenues") of the Authority from whatever source derived, after payment of reasonable and proper expenses of maintenance and operation.

The foregoing variations are proposed for the following reason(s):

In order to eliminate any possible ambiguity in the construction of the language of the payment provisions set forth in the Offer, it was deemed advisable to specify in the obligations the exact order of payments from the revenues.

There is no legal objection to the Government accepting the obligations conforming to the specifications offered. If you approve the variations in the specifications of the obligations offered from the specifications in the Government's Offer, will you please indicate your approval in the space provided below.

Approved:

LEGAL ~~SECTION~~ Division  
By *Wm. C. Carr*

Acting General Counsel.

Approved:

*Flay a. M. Welch*  
For the Finance Division (General Office)





There is no legal objection to the Government accepting the obligations conforming to the specifications offered. If you approve the variations in the specifications of the obligations offered from the specifications in the Government's Offer, will you please indicate your approval in the space provided below.

Legal ~~SECTION~~ Division

By (Sgd) Charlie C. McCall  
Acting General Counsel

Approved:

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

Approved:

(Sgd) Floyd E. Welsh  
For the Finance Division (Central Office).



W A I V E R

To be attached to Offer made by the  
United States of America to Grand  
River Dam Authority, Oklahoma, dated  
as of October 16, 1937, and accepted  
as of October 16, 1937 (Docket No.  
Okla. 1097-P-DS).

JAN 16 1940

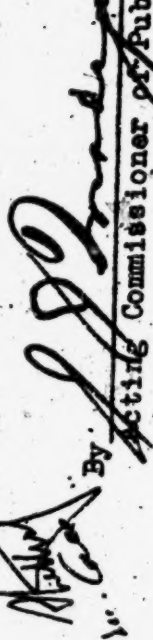
A provision of Paragraph 2(e) of the Offer, as waived and  
modified by Waiver dated December 30, 1938, requires that the  
Project be completed not later than December 31, 1939.

Said provision is hereby waived further to the extent neces-  
sary to permit completion of the Project not later than March 30,  
1940.

Approved:

UNITED STATES OF AMERICA

Federal Works Administrator

By  Acting Commissioner of Public Works

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"Exhibit B"

CERTIFICATE OF EXECUTIVE OFFICER

I, J. J. Madigan, DO HEREBY CERTIFY as follows:

(1) That I am the duly appointed Executive Officer of the Public Works Administration, Federal Works Agency, and that by virtue of my office I am the proper custodian of the records of said Public Works Administration, Federal Works Agency,

(2) That I have compared the annexed copies of Certificate concerning Offer dated November 9, 1937, signed by G. Wm. Comfort, Assistant to the Executive Officer, concerning Docket No. Okla. 1097-P-IS, and

L. D. Form No. 104-D signed by Moses Jackson dated November 2, 1937, concerning Docket No. Okla. 1097-P-IS, and

Notice of special meeting to the members of the Board of Directors of the Grand River Dam Authority dated October 16, 1937, and


Acceptance resolution and minutes pertaining to its adoption dated October 16, 1937, and

Certificate of Secretary of the Board of Directors of the Grand River Dam Authority, Oklahoma, dated October 16, 1937,

the originals of which are on file in the records of my office, and the same are true and correct copies thereof and of the whole of said originals, and

(3) That the Public Works Administration, Federal Works Agency, has no seal.

IN WITNESS WHEREOF I have hereunto set my hand this eighteenth day of March, nineteen hundred and forty.

  
J. J. Madigan,  
Executive Officer

Public Works Administration  
Federal Works Agency



FEDERAL EMERGENCY ADMINISTRATION  
OF PUBLIC WORKS

WASHINGTON, D. C.

NOV - 9 1937

CERTIFICATE CONCERNING OFFER

Docket No. **6222, 1937-2-30**

Applicant: **Grand River Inc Authority,  
Vinita, Oklahoma.**

The undersigned, being a duly appointed, qualified and acting Assistant to the Executive Officer of the Federal Emergency Administration of Public Works, does hereby certify:

1. That there is in the files of this office a true, correct and complete copy of the Offer made by the United States of America to the above named applicant to aid in financing the construction of the project covered by the above numbered docket;
2. That I have compared said Offer as set out in the attached certified copy of the proceedings of said applicant accepting the same with the copy of said Offer in said files; and
3. That the Offer as set out in the attached copy of the proceedings of said applicant is a true, correct and complete copy of said Offer made by the United States of America to said applicant.

IN WITNESS WHEREOF, I have hereunto set my hand as Assistant to the Executive Officer of the Federal Emergency Administration of Public Works as of

*E. J. Campbell*  
Assistant to the Executive Officer,  
Federal Emergency Administration of Public Works.

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FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

LEGAL DIVISION

We have compared the offer as set out in the attached proceedings of acceptance executed by the applicant with the draft thereof bearing the approval of the Engineering and Finance Divisions and conformed copy of executed offer, and find it to be a true and exact copy of such approved draft.

Docket No. Okla. 1097-P-D8

Grand River Dam Authority, Vinita, Oklahoma.

Administrative Section Checking Unit.

By

*Marcel Jackson*

Date

*November 2, 1937*



Okla. 1097-P-DS

NOTICE OF SPECIAL MEETING

THE STATE OF OKLAHOMA  
COUNTY OF CRAIG  
CITY OF VINETA

TO THE MEMBERS OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY:

Notice is hereby given that a special meeting of the Board of Directors of the Grand River Dam Authority will be held at its regular meeting place at 10 o'clock A. M., on the 16 day

of October, 1937, for the purpose of considering an offer of the United States of America to aid, by way of loan and grant, in financing the construction of a project therein described and for the purpose of accepting said offer.

Dated this 16 day of October, 1937.

(S E A L)

Ray Cunningham  
Chairman, Board of Directors.  
Queen B. B. Smith  
Secretary, Board of Directors.

CONSENT TO MEETING

We, the undersigned members of the Board of Directors of the Grand River Dam Authority, hereby accept service of the foregoing notice, waiving any and all irregularities in such service and such notice, and consent and agree that said Board of Directors shall meet at the time and place therein named, and for the purposes therein stated.

Ray Cunningham  
Queen B. B. Smith  
Charles Selach  
J. P. Thompson  
W. M. Jenkins  
W. M. Jenkins

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# ACCEPTANCE RESOLUTION

## AND MINUTES PERTAINING TO ITS ADOPTION

THE STATE OF OKLAHOMA

COUNTY OF CRAIG

CITY OF VINITA

The Board of Directors of the Grand River Dam Authority,  
Oklahoma, convened in Special session, at the regular meeting  
place, on this 16th day of October, 1937,  
with the following members present, to-wit:

Layman, Chairman

Chas. W. Schaefer, Secretary

Geo. W. Schaefer, Director

J. F. Thompson, Director

Chas. F. Tucker, Director

Gray Brown, Director

Paul Ward, Director

M. Sullivan, Director

W. C. Kelly, Director

                    , Director

with the following absent: NONE, constituting a quorum, at which  
time the following, among other business, was transacted, to-wit:

Director Geo. W. Schaefer introduced a proposed  
resolution and moved its adoption. The resolution was read in full.

Director M. Sullivan seconded the motion.

The motion was carried by the following vote:

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ATTN: Gen. W. Schaefer Ohio Perkins  
My Eugene Mr. Duncan  
J. P. Thompson Ray McNaughton  
R. P. Kelly Paul R. Butler  
Earl Ward

RE: NONE.

The Chairman announced that the resolution had been finally passed.

The resolution is, as follows:

RESOLUTION

ACCEPTING AN OFFER OF THE UNITED STATES OF AMERICA TO AID, BY WAY OF LOAN AND GRANT, IN FINANCING A PROJECT THEREIN DESCRIBED.

WHEREAS, the United States of America has offered to aid the Grand River Dam Authority, Oklahoma, by way of loan and grant, in financing the construction of a project fully described in said offer; and,

WHEREAS, it is deemed desirable that the said offer be accepted by the Grand River Dam Authority, Oklahoma, at this time;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Grand River Dam Authority, Oklahoma,:

1. That the offer of the United States of America, reading as follows:

"FEDERAL EMERGENCY ADMINISTRATION  
OF PUBLIC WORKS

Washington, D. C.,

Dated: Oct 16 1937

Docket No. OKLA. 1097-P-DS.

Grand River Dam Authority,  
Vinita, Oklahoma.

1. Subject to the Terms and Conditions (FWA Form No. 230) which are made a part hereof, the United States of America hereby offers to aid in financing the construction of a dam to provide water storage for the purpose of flood control and of hydroelectric power development, together with a hydroelectric generating plant and transmission lines, including necessary equipment and the acquisition of the



necessary lands and rights of way therefor (herein called the "Project"), by making a grant to Grand River Dam Authority (herein called the "Applicant") in the amount of 45 percent of the cost of the Project upon completion, as determined by the Federal Emergency Administrator of Public Works (herein called the "Administrator") but not to exceed, in any event, the sum of \$6,437,000, and by purchasing, at the principal amount thereof plus accrued interest thereon, from the Applicant, obligations of the description set forth below (or such other description as shall be mutually satisfactory) in the aggregate principal amount of \$11,863,000, out of an authorized issue of \$12,500,000.

- (a) Obligor: Grand River Dam Authority;
- (b) Type: Negotiable, special obligation, water and electric power revenue, serial, coupon bond;
- (c) Denomination: \$1,000;
- (d) Date: October 1, 1937;
- (e) Interest rate and interest payment dates: 4 percent per annum, payable semi-annually on April 1 and October 1 in each year;
- (f) Place of payment: At the office of the Trustee hereinafter mentioned or (at the option of the holder) at a bank or trust company in the Borough of Manhattan, City and State of New York;
- (g) Registration privileged: As to principal only;
- (h) Maturities: On October 1 in amounts and years as follows:

\$63,000 in 1942,  
100,000 in 1943 to 1946, inclusive,  
200,000 in 1947 to 1950, inclusive,  
300,000 in 1951 to 1955, inclusive,  
400,000 in 1956 to 1960, inclusive,  
500,000 in 1961 to 1965, inclusive,  
600,000 in 1966 to 1971, inclusive,  
700,000 in 1972.

- (i) Redemption provisions, if any: Redeemable in the inverse order of maturities, at the option of the Applicant, in whole or in part (selection as between bonds of the same maturity to be by lot) on any interest payment date after not less than 30 days' published notice, at a redemption price equal to the principal amount and accrued interest, plus a premium of 1/2% of such principal amount for each year or fraction thereof from the redemption date to the date of maturity, such premium, however, not to exceed 5% of such principal amount;

- (j) Payable as to both principal and interest from and secured by a first pledge of the gross income and revenues of the Applicant, from whatever source derived, including the gross income and revenues from the Project, and all improvements, replacements, renewals and extensions thereof, and additions thereto (all such income and revenues of the Applicant to be set aside in a special fund to be used for the payment of reacquirable and proper expenses of maintenance and operation and the principal of and interest on the bonds and for other proper corporate purposes), and issued under and additionally secured by an indenture and deed of trust from the Applicant to a bank or trust company satisfactory to the Administrator, as Trustee, said indenture to be in form satisfactory to the Administrator,

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and to provide for the assume of not exceeding \$12,500,000 principal amount of bonds maturing as follows:

\$70,000 in 1942,  
110,000 in 1943 to 1946, inclusive,  
210,000 in 1947 to 1950, inclusive,  
320,000 in 1951 to 1955, inclusive,  
430,000 in 1956 to 1960, inclusive,  
540,000 in 1961 to 1965, inclusive,  
650,000 in 1966 to 1971, inclusive, and  
800,000 in 1972.

2. This Offer is made subject to the following special conditions:

(a) Anything in this Offer or in said Terms and Conditions to the contrary notwithstanding, the United States of America shall be under no obligation to take up and pay for any of the obligations herein described or to make any payment on account of the said Grant unless and until

First the Applicant shall have satisfied said Administrator, in such manner (whether by judicial determination or otherwise) as the Administrator may deem advisable, as to the validity and constitutionality of the Grand River Dam Authority Act and all amendments thereto (including specifically Article 1 and Article 2 of Chapter 70 of the Session Laws, 1937, of the State of Oklahoma), as to the validity of the organization of the Applicant and its power to construct and operate the Project as proposed, as to the validity of the proceedings for the authorization, issuance and proposed sale of the said obligations, and the validity of the obligations themselves and the covenants and agreements of the Applicant contained in said obligations and in the proceedings for their authorization, issuance and sale and as to the validity of the contract between the Applicant and the United States of America to be created by the acceptance of this Offer, including in all cases, specific determinations of such questions concerning the foregoing as the Administrator or his counsel may present;

Second the Applicant shall submit such further data as the Administrator may require to confirm the estimates of cost set forth in the amended application of the Applicant, and showing that the final cost of the Project, including generating facilities with a sufficient capacity to liquidate the loan, will not exceed \$20,000,000;

Third the Administrator shall be satisfied as to the extent and validity of the water rights of the Applicant, including the right of the Applicant to store the necessary waters for the operation of the Project, and to use such waters for irrigation and for the development of electric energy;

(b) No additional funds, whether from the Federal Emergency Administration of Public Works or from any other department, bureau or agency of the Federal Government, will be requested by or on behalf of the Applicant in connection with the Project or any subsequent additions or improvements thereto;

(c) The cost of all lands, rights of way and easements shall be excluded from the cost of the Project for the purpose of computing the Grant, and the Applicant shall submit evidence satisfactory to said Administrator that such lands, rights of way and easements as are required for the construction and operation of the Project can be purchased or acquired at a cost not to exceed \$1,250,000;

(d) No payments shall be made to the Grand-Hydro Interests, so-called, from any funds made available by the United States of America, except payments for such lands as may be required for the Project, the cost of which lands shall be subject to the approval of the Administrator;

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(e) The Applicant will begin work on the Project as early as possible but in no event later than January 1, 1938, and will complete the Project with all practicable dispatch, and in any event by July 1, 1939;

(f) The Administrator may designate a Project Engineer and a Project Auditor as his representatives on the Project and may require that no disbursements shall be made from the Construction Account except such as the Project Engineer shall certify to be in accordance with the Certificate of purposes previously filed with and accepted by the Government and to be reasonable in amount. If the Administrator shall so request, the Applicant will pay the salaries and expenses of the Project Engineer and Project Auditor;

(g) The Applicant will submit estimates of all proposed expenditures for periods of not less than three months each, which shall be approved by the Administrator; and

(h) The Applicant shall appoint a General Manager who shall have charge of the construction of the Project and who shall at all times during the construction period be satisfactory to the Administrator.

UNITED STATES OF AMERICA

Federal Emergency Administrator  
Of Public Works

By: (Sgd) E. W. Clark  
For the Administrator.

be and the same is hereby in all respects accepted by the Grand River

2. That the Chairman and Secretary of the Board of Directors

be and they are hereby authorized to do all things necessary and/or convenient to communicate the acceptance of said Offer to the United States of America, through the Federal Emergency Administration of Public Works.

PASSED AND APPROVED, this 16th day of October,  
1937.

(S E A L)

ATTEST:

*Paul P. Butler*  
Secretary of the Board of Directors,  
Grand River Dam Authority, Oklahoma.

*Lawrence H. ...*  
Chairman of the Board of Directors,  
Grand River Dam Authority, Oklahoma.

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CERTIFICATE OF SECRETARY

THE STATE OF OKLAHOMA

COUNTY OF CRAIG

CITY OF VINITA

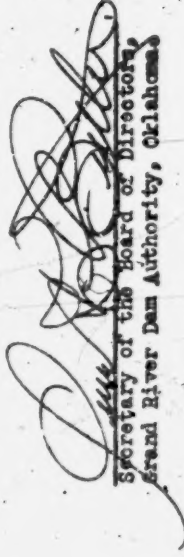
I, the undersigned Secretary of the Board of Directors of the Grand River Dam Authority, Oklahoma, do hereby certify that the above and foregoing is a true and correct copy of a resolution (and of the minutes pertaining to its adoption) adopted at a

special session of the Board of Directors, held on the 16 day of October, 1937, which resolution is of record in the minutes of the said Board, Volume 1, page

Dam Authority, Oklahoma, this 16 day of October.

37.

(SEAL)

  
Secretary of the Board of Directors,  
Grand River Dam Authority, Oklahoma.

6277840CT2337



✓ Exhibit "C" to complaint

## UNITED STATES OF AMERICA

### FEDERAL POWER COMMISSION

I, Leon M. Fuquay, Secretary of the Federal Power Commission,  
and official custodian of the records of said Commission, do hereby  
certify that the attached is a true and correct copy of the license  
issued on July 26, 1939, in the matter of Project No. 1494, Grand  
River Dam Authority \_\_\_\_\_

In witness whereof I have hereunto subscribed my name  
and caused the seal of the Federal Power Commission  
to be affixed this 18th day of March A.D., 19 40  
at Washington, D. C.

*Leon M. Fuquay*



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## FEDERAL POWER COMMISSION

License Affecting Navigable Waters and Reservations of  
the United StatesProject No. 1494—Oklahoma-Missouri  
Grand River Dam Authority

Pursuant to the provisions of the Federal Power Act (hereinafter referred to as the Act), the Federal Power Commission (hereinafter referred to as the Commission) hereby issues to Grand River Dam Authority, of Vinita, Oklahoma (hereinafter referred to as the Licensee), this license for the purpose of constructing, operating, and maintaining certain project works as hereinafter described on Grand River, a stream over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, subject to the rules and regulations of the Commission, and subject to the conditions, provisions, and requirements set forth hereinafter and in the Act, which is hereby referred to and incorporated as a part hereof.

Article 1. This license is issued for a period of fifty (50) years from January 1, 1939, and in consideration hereof and the benefits and advantages accruing hereunder to the Licensee, it is expressly agreed by the Licensee that the entire project, project area, and project works, as hereinafter designated and described, whether or not located in, on, or along said Grand River or upon reservations of the United States, shall be subject to all the terms and conditions of this license.

Article 2. The project covered by and subject to this license is located in Mayes, Craig, Delaware, and Ottawa Counties, Oklahoma, and McDonald County, Missouri; affects certain tracts of Indian tribal lands, and consists of—

A. All lands constituting the project area and enclosed, or the location of which is shown, by the project boundary, and/or interest in such lands necessary or useful for the purposes of the project, such project area and project

boundary being more fully shown and described by certain exhibits which accompanied the application for license and which are designated and described as follows:

Exhibit J: General map entitled "Location Map" (FPC No. 1494-3);

Exhibit K: Detail map in 16 sheets entitled "Reservoir Area" (FPC Nos. 1494-4 to 19, inclusive);

B. All project works consisting of—

(a) A dam approximately 147 feet in height and 5,595 feet long, located on Grand River about 5 miles northeasterly from the Town of Pensacola, consisting of a reinforced concrete, multiple arch, non-overflow section 4,284 feet long, a concrete gravity spillway section 861 feet long, with crest gates of the Taintor type, and a concrete gravity, non-overflow section 451 feet long;

(b) An auxiliary spillway located about one mile east of the main dam, consisting of two detached gravity concrete sections, about 800 feet in total length, also surmounted by Taintor gates;

(c) A reservoir extending approximately 55 miles upstream from the dam, having a storage capacity of 1,680,000 acre-feet at elevation 745 feet above mean sea level, which is the maximum power pool level, and provision for flood control storage to elevation 755, at which level the total storage capacity will be about 2,200,000 acre-feet;

(d) A power house located immediately below the dam with initial installation of 60,000 kilowatts in four units and [fol. 167] with provision for the installation of two additional similar units;

(e) Transmission lines to available markets in the general vicinity of the project;

the location and character of said project works being more fully shown and described by the exhibits hereinbefore cited and by the following additional exhibits:

Exhibit L: Plans in 40 sheets designated as follows:

L-1—Topography and Profiles—Dam Site and East Spillway (F. P. C. No. 1494-40);

L-2—Sections of Gravity Dam and Spillway (F. P. C. No. 1494-41);

L-3—Section and Elevation of Multiple Arch Dam and Power House (F. P. C. No. 1494-42);

L-4—Dam and Power House, Dam-Plan and Elevation (F. P. C. No. 1494-43);

L-5—Dam and Power House, Rock Profile—Borings (F. P. C. No. 1494-44);

L-6—Dam and Power House, Plans and Elevations (F. P. C. No. 1494-45);

L-7—Dam and Power House, Typical Buttress Details (F. P. C. No. 1494-46);

L-8—Dam and Power House, Buttress Slab Details (F. P. C. No. 1494-47);

L-9—Dam and Power House, Buttress Top Details (F. P. C. No. 1494-48);

L-10—Dam and Power House, Buttress No. 5 and Gravity Wall (F. P. C. No. 1494-49);

L-11—Dam and Power House, Details Buttress No. 52 (F. P. C. No. 1494-50);

L-12—Dam and Power House, Typical Arch Details (F. P. C. No. 1494-51);

L-13—Dam and Power House, Intake Structure—General (F. P. C. No. 1494-52);

L-14—Dam and Power House, Intake—Details below Deck (F. P. C. No. 1494-53);

L-15—Dam and Power House, Intake—Details of Deck (F. P. C. No. 1494-54);

L-16—Dam and Power House, Intake—36" Penstock Inlet (F. P. C. No. 1494-55);

L-17—Dam and Power House, Temporary and Permanent Outlets (F. P. C. No. 1494-56);

L-18—Dam and Power House, Gravity Spillway Sections (F. P. C. No. 1494-57);

[fol. 168] L-19—Dam and Power House, Gravity Non-Overflow Sections (F. P. C. No. 1494-58);

L-20—Dam and Power House, Abutment—East End of Dam (F. P. C. No. 1494-59);

L-21—Dam and Power House, Core Wall and Training Wall (F. P. C. No. 1494-60);

L-22—Dam and Power House, East Spillways—General Layout (F. P. C. No. 1494-61);

L-23—Dam and Power House, East Spillways—Weir and Pier Details (F. P. C. No. 1494-62);

L-24—Dam and Power House, East Spillways—Abutment Details (F. P. C. No. 1494-63);



L-25—Dam and Power House, Radial Gates—Main Spillway (F. P. C. No. 1494-64);

L-26—Dam and Power House, Radial Gates—East Spillways (F. P. C. No. 1494-65);

L-27—Dam and Power House, Bridges—General Views (F. P. C. No. 1494-66);

L-28—Dam and Power House, Bridges—Details, Arch Sections (F. P. C. No. 1494-67);

L-29—Dam and Power House, Bridges—Details, Arch Sections (F. P. C. No. 1494-68);

L-30—Dam and Power House, Bridges—Details, Spillway Sections (F. P. C. No. 1494-69);

L-31—Dam and Power House, Bridges—Details, Non-Overflow Sections (F. P. C. No. 1494-70);

L-32—Dam and Power House, Power House Area—General Layout (F. P. C. No. 1494-71);

L-33—Dam and Power House, Power House—Plan at Elevation 667 (F. P. C. No. 1494-72);

L-34—Dam and Power House, Power House—Plan at Elevation 630 (F. P. C. No. 1494-73);

L-35—Dam and Power House, Power House—Plan at Elevation 606 (F. P. C. No. 1494-74);

L-36—Dam and Power House, Power House—Longitudinal Sections (F. P. C. No. 1494-75);

L-37—Dam and Power House, Power House—Transverse Sections (F. P. C. No. 1494-76);

L-38—Dam and Power House, Power House—Transverse Sections (F. P. C. No. 1494-77);

L-39—Dam and Power House, 15-Foot Penstocks (F. P. C. No. 1494-78);

L-40—Dam and Power House, 36-Inch Penstock (F. P. C. No. 1494-79);

Exhibit M: General description of the dam, power plant, and mechanical and electrical equipment—two typewritten sheets, signed "Grand River Dam Authority by Ray McNaughton, Chairman," on April 29, 1938;

[fol. 169] C. All other structures, fixtures, equipment, or facilities used or useful in the maintenance and operation of the project and located upon the project area, including such portable property as may be used and useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project

works is approved or acquiesced in by the Commission; also all other rights, easements, or interests the ownership, use, occupancy, or possession of which is necessary or appropriate in the maintenance and operation of the project or appurtenant to the project area.

Article 3. The maps, plans, specifications, and statements designated and described as exhibits in Article 2 hereof and approved by the Commission, subject to such changes therein as may be made necessary by the performance of the acts required under Articles 4 and 5 hereof and subject to such minor modifications of design as the Commission may hereafter direct, are hereby made a part of this license and no substantial change shall hereafter be made in said exhibits, or any of them, until such change shall have been approved by the Commission; provided, however, that if the Licensee deems it necessary or desirable that said approved maps, plans, specifications, and statements, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional maps, plans, specifications, and statements covering the proposed changes which, upon approval, shall become a part of this license and shall supersede in whole or in part such maps, plans, specifications, or statements, theretofore made a part of this license, as may be specified in the order or endorsement of approval.

[fol. 170] Article 4. Subject to approval by the Commission, the Licensee shall complete Exhibits J, K, L, and M with respect to the location, design, and description of transmission lines in accordance with the rules and regulations of the Commission and file the same with the Commission when and as the Licensee determines upon the location and design of said lines. The Licensee shall not commence construction of any transmission lines until the plans therefor have been approved by the Commission.

Article 5. The Licensee shall construct such extensions to the aprons below the spillway sections of the dam, or provide such other works for the protection of the spillways, as the Commission, on the basis of project operation experience, shall determine to be necessary or desirable.

Article 6. The project works shall be constructed in substantial conformity with the approved maps, plans, and

specifications made a part of this license and designated and described in Articles 2 and 3 hereof, or as changed in accordance with the provisions and requirements of Articles 3, 4, and 5. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works constructed under this license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in or divergence from such approved maps, plans, and specifications may be made in the course of construction, if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any such minor changes made without the prior approval of the Commission, which in its judgment have produced [fol. 171] or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Article 7. The work of construction, and the operation and maintenance of the project works under this license, shall be subject to the inspection and approval of the Regional Director, Federal Power Commission, Denver, Colorado, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall notify such representative of the date upon which work will begin, and as far in advance thereof as he may reasonably specify, and shall notify him promptly in writing of any suspension of construction for a period of more than one week, and of its resumption and completion.

Article 8. Subject to the provisions of Section 13 of the Act, the Licensee shall commence the construction of the project works on or before April 1, 1939, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete the same on or before December 31, 1940, including the initial installation of four 15,000-kilowatt generating units; and, consistent with the purposes of the project, shall thereafter install two additional generating units of approximately the same capacity at such time or times as the Commission may

direct so as to supply adequately the reasonable market demands for power.

Article 9. Upon the completion of the project works, or at such other times as the Commission may direct, the Licensee shall submit to the Commission for approval revised maps, plans, specifications, and statements, insofar as necessary to show any divergence from or variations in the project area as finally located or in the project works as constructed when compared with the area shown [fol. 172] and the works designated or described in this license or in the maps, plans, specifications, and statements approved by the Commission under the provisions of Article 3 hereof, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statements shall, if and when approved by the Commission, be made a part of this license and shall, to the extent and in the particulars set forth in the order or endorsement of approval, be substituted for the maps, plans, specifications, and statements theretofore approved by the Commission under the provisions of Article 3 hereof. The maps finally approved by the Commission and made a part of this license under the provisions of Articles 3 and 9 hereof shall show the project area to an adequate scale and the boundary thereof either by legal subdivisions, by metes and bounds survey, or by uniform offsets from center lines survey. Said project area shall include all parcels of land or portions of parcels, without respect to ownership and whether or not the exact property lines can be definitely fixed and determined, the use and occupancy of which are or will be valuable or serviceable in the maintenance and operation of the project; on which are located or to which are appurtenant the project works (other than portable property) and the rights, easements, or interests likewise valuable and serviceable; and the ownership or possession, or the right of use and occupancy of which are subject to acquisition by the United States under the provisions of Section 14 of the Act. Such maps or statements shall give the prior ownership of each parcel of land, the character of ownership or the right of use and occupancy possessed by the Licensee, together with



[fol. 173] the term of such right, the area acquired in fee, the area of each parcel within the project boundary, and the date of acquisition thereof.

Article 10. For the purpose of determining the stage and flow of the stream from which water is to be diverted for the operation of the project works, and the amount of water held in and drawn from storage, the Licensee shall install and maintain staff or recording gages in the reservoir and in the tailrace of the power plant; shall maintain such existing gaging stations and/or install and maintain such new stations above and below the reservoir as the Commission may deem necessary; and shall provide for the required readings of such gages and the adequate rating of said station or stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof may be altered from time to time, if necessary to secure adequate determinations, but such alterations shall not be made except with the approval of the Commission or its authorized representatives, or upon the specific direction of the Commission. The installation of gages, the ratings of gaging stations, and the determinations of flow thereat shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amounts estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing [fol. 174] determinations to the satisfaction of the Commission, and shall make return of such records annually, at such time and in such form as the Commission may prescribe.

Article 11. The Licensee shall clear and keep clear the bottom and margins of the reservoir between elevations 745 and 699 feet above mean sea level and shall remove the tops of brush and trees growing at a lower elevation so that they shall not extend above said elevation 699.

Article 12. The Licensee shall acquire all necessary lands, easements, and rights-of-way up to elevation 750; and, with-

out regard to the provisions of Article 13 below, shall raise all railroads affected by the project to such elevation above elevation 755 as may be necessary to provide for operation of the railroads when the reservoir is raised to elevation 755.

Article 13. The Licensee is hereby authorized to operate the reservoir in such manner as to utilize storage space below elevation 745 for power production purposes but not to utilize any storage space above said elevation 745 for power production purposes except during periods when the reservoir is being operated for the control of floods. The storage capacity between elevations 745 and 755 shall be expressly reserved for control of floods. The Licensee shall impound flood waters in the storage space between elevations 745 and 755; and release flood waters therefrom, when, as, and in the manner directed by the Secretary of War, or his authorized representative: provided, that the Licensee shall not be required to impound any water above elevation 750 until the United States has acquired the necessary flowage rights above that elevation.

[fol. 175] Article 14. Subject to the provisions of Article 13, the operation of the project by the Licensee, so far as such operation may affect the use, storage, and discharge from storage, of waters, shall at all times be subject to the control of the Secretary of War under such rules and regulations as he may prescribe in the interests of navigation and flood control, and subject to the control of the Commission under such rules and regulations as it may prescribe for the safety of the dam and for the protection of life, health, and property.

Article 15. In the interest of public health, the Licensee shall control mosquito propagation in the reservoir by distribution of oil or diluted paris green, or by other effective method, at such times and in such manner as may be directed by the Commission or by the State Commissioner of Public Health of Oklahoma, and shall at all times be subject to the lawful jurisdiction of said Commissioner of Public Health.

Article 16. The Licensee shall allow officers and employees of the United States free and unrestricted access into, through, and across the project and project works in the performance of their official duties.

Article 17. The Licensee shall be liable for all damages occasioned to the property of others by the construction,

operation, or maintenance of the project works or of the works appurtenant or accessory thereto, and in no event shall the United States be liable therefor.

Article 18. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, timber, or other property of the United States occasioned by the construction, operation, or maintenance of the project works or of the works appurtenant or accessory thereto, constructed under this license. Arrangements to meet such [fol. 176] liability, either by compensation for such injury or destruction, reconstruction, or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 19. In the construction and maintenance of the project works, the Licensee shall place and maintain suitable structures to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone, and other signal wires or power transmission lines heretofore constructed by others, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads.

Article 20. The Licensee shall interpose no objections to nor in any way prevent the use of water for domestic purposes by persons or corporations occupying lands of the United States under permit along or near any stream or body of water, natural or artificial, used by the Licensee in the operation of the project works.

Article 21. The actual legitimate original cost of the original project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Act and the Commission's rules and regulations.

Article 22. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of such reservoir or other improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. The pro-

[fol. 177] portion of such charges to be paid by the Licensee shall be determined from time to time by the Commission. Whenever such reservoir or other improvement is constructed by the United States, the Licensee shall pay the charges into the Treasury of the United States upon bills rendered by the Commission.

Article 23. (a) Subject to the provisions of Section 10(e) of the Act, including the proviso relating to the exemption from payment of annual charges of municipalities distributing power from a licensed project to the public without profit, the Licensee shall pay to the United States as reimbursement for the costs of administration of Part I of the Act an annual charge of one (1) cent per horsepower on the ultimate installed capacity of 120,000 horsepower, plus two and one-half ( $2\frac{1}{2}$ ) cents per 1,000 kilowatt-hours of energy generated by the project during the fiscal year ended June 30th preceding the submission of a bill therefor by the Commission. A statement of the number of kilowatt-hours generated during said fiscal year, certified under oath, shall be filed with the Commission on or before September 1st following the end of said fiscal year.

(b) The Licensee shall pay to the United States for the use, occupancy, and enjoyment of its lands and Indian tribal lands an annual charge to be fixed by the Commission pursuant to the provisions of the Act.

(c) Payment by the Licensee of annual charges shall be made to the United States within thirty (30) days after the close of the calendar year or after the date of statement rendered by the Commission, whichever is later. A penalty will be imposed pursuant to the provisions of the Act for [fol. 178] delinquency in payment unless otherwise ordered by the Commission.

Article 24. After the first twenty (20) years of operation of the project, six percent per annum is the specified rate of return on the net investment in the project under license for determining surplus earnings, in accordance with the provisions of Section 10(d) of the Act, for the establishment and maintenance of amortization reserves to be held until the termination of the license, or, in the discretion of the Commission, to be applied from time to time in reduction of the net investment in such project, and one-half of all surplus earnings in excess of six percent per annum re-



ceived in any calendar year shall be paid into and held in such amortization reserves.

Article 25. No lease of the project or any part thereof whereby the lessee is granted the exclusive occupancy, possession, or use of project works for purposes of generating, transmitting, or distributing power shall be made without the prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of this license, of the Act, and of the rules and regulations of the Commission shall be applicable to such lease and to such property so leased to the same extent as if the lessee were the Licensee hereunder: provided, that the provisions of this article shall not apply to parts of the project or project works which may be used by another jointly with the Licensee under a contract or agreement whereby the Licensee retains the occupancy, possession, and control of the property so used and receives adequate consideration for such joint use, or [fol. 179] to leases of land while not required for purposes of generating, transmitting, or distributing power, or to buildings or other property not built or used for said purposes, or to minor parts of the project or project works, the leasing of which will not interfere with the usefulness or efficient operation of the project by the Licensee for said purposes.

Article 26. It is hereby understood and agreed that the Licensee, its successors and assigns, will, during the period of this license, retain the possession of all project property covered by this license as issued or as hereafter amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and that none of such properties valuable and serviceable to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: provided, that a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. The Licensee further agrees, on behalf of itself, its successors and assigns, that, in the event the project is taken over by the United States upon the termination of this license, as provided in Section 14 of the Act, or is transferred to a new licensee under the

provisions of Section 15 of the Act, it will be responsible for and will make good any defect of title to or of right of user in any such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge or [fol. 180] will assume responsibility for payment and discharge of all liens or incumbrances upon the project or project property created by said Licensee or created or incurred after the issuance of this license: provided, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the Licensee for the purpose of transferring the project to the United States or to a new licensee to acquire any different title or right of user in any such project property than was necessary to acquire for its own purposes as Licensee.

Article 27. With the written consent of the Licensee, the Commission may by order made under its seal, and after the public notice required by the Act, modify, alter, enlarge, or omit, insofar as authorized by law, any one or more of the conditions or provisions of this license.

Article 28. The enumeration herein of any rights reserved to the United States or to any State or municipality under the Act, or of any requirement of the Act or of the rules and regulations of the Commission, shall not be construed in any degree as impairing any other rights so reserved by the Act or as limiting the force of any other requirement of the Act or of the rules and regulations.

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(Here follow 2 photolithographs, side folios 181-182)

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IN WITNESS WHEREOF, the Commission has caused its name to be signed  
hereto by CLYDE L. SEAWAY, its Chairman, and its  
seal to be affixed hereto and attested by LEON M. FUGGAY, its  
Secretary, this 26<sup>th</sup> day of July, 1939,  
pursuant to its orders of January 27, 1939, April 28, 1939, and July 5, 1939,  
attached hereto.

Attest:

Leon M. Fuggay  
Secretary.

FEDERAL POWER COMMISSION

By Clyde L. Seaway  
Chairman.

ECB:vek  
7-5-39

-17-

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IN TESTIMONY OF ACCEPTANCE of all the provisions and conditions

of the Federal Power Act and of the further conditions imposed in the foregoing license, the Licensee this 11<sup>th</sup> day of July 1939, has caused its name to be signed hereto by Ray McNaughton, Chairman of its Board of Directors, and its corporate seal to be affixed hereto and attested by Sam D. Rose, its Secretary, pursuant to a resolution of its Board of Directors duly adopted on the 11<sup>th</sup> day of July, 1939, a certified copy of the record of which is attached hereto.

GRAND RIVER DAM AUTHORITY

By Ray McNaughton  
Chairman of the Board  
of Directors.

Attest:

Sam D. Rose  
Secretary.

(Executed in triplicate)

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[fol. 183]

UNITED STATES OF AMERICA

## FEDERAL POWER COMMISSION

Commissioners: Clyde L. Seavey, Acting Chairman;  
Claude L. Draper, Basil Manly, John W. Scott.

Project No. 1494

Application of GRAND RIVER DAM AUTHORITY

January 27, 1939.

## Order Authorizing Issuance of License for Major Project

Upon application filed May 3, 1938, and subsequently revised, by the Grand River Dam Authority, of Vinita, Oklahoma, for a license for a major project on the Grand River near Pensacola, Mayes County, Oklahoma; and

It appearing to the Commission that:

(a) The project will consist of a dam approximately 147 feet in height and 5,595 feet in length, an auxiliary spillway, a storage reservoir extending approximately 55 miles upstream and having a storage capacity of 1,680,000 acre-feet at maximum power pool level of elevation 745 and provision for additional storage for flood control of approximately 520,000 acre-feet to elevation 755, a power house with initial installation of 60,000 kilowatts in four units and provision for two additional similar units, transmission lines, and appurtenant facilities, all as shown on the exhibits herein-after specified:

(b) The proposed project will affect certain Indian tribal lands and possibly lands of the United States, and is substantially similar to the project which the Commission found on February 11, 1938, would affect the interests of interstate commerce;

The Commission, having considered the application as revised and the entire record thereon, finds that:

(1) The applicant is a public corporation created, organized, and existing under the laws of the State of Oklahoma for the purpose of constructing, operating, and maintaining the aforesaid project, and has submitted satisfactory evidence of compliance with all applicable State laws

insofar as necessary to effect the purposes of a license for the project;

(2) No other application for a similar project or in conflict with the present application is before the Commission;

(3) The plans for the project structures affecting navigation have been approved by the Secretary of War and the Chief of Engineers, subject to certain conditions hereinafter provided;

[fol. 184] (4) The Secretary of the Interior, who has supervision of the Indian tribal lands within the project area, has reported by letter dated September 10, 1938, that no objection will be interposed to the issuance of a license for the project subject to certain conditions hereinafter provided;

(5) The Assistant Secretary of Commerce has reported by letter dated August 24, 1938, that no special provision need be made in the proposed structures for the protection of fish life at the project;

(6) The project, including the maps, plans, and specifications modified as hereinafter provided, is best adapted to a comprehensive plan for improving or developing the Grand River and the Arkansas River to which it is tributary for the use or benefit of interstate commerce, for the improvement and utilization of water power development and for other beneficial public uses, including recreational purposes;

(7) The project is desirable and justified in the public interest for the purpose of improving or developing the Grand River and the Arkansas River to which it is tributary for the use or benefit of interstate commerce;

(8) The issuance of a license as hereinafter provided will not affect any Government dam or the development of any water power resources for public purposes which should be undertaken by the United States itself;

(9) The ultimate installed capacity of the project will be 120,000 horsepower when the project is completed as hereinafter authorized and the hydroelectric energy generated thereby will be used for public utility purposes;

(10) The amount of annual charges to be paid by the applicant for the purpose of reimbursing the United States



for the costs of administration of Part I of the Federal Power Act is reasonable as hereinafter fixed and specified;

(11) In accordance with Section 10(d) of the Act, the rate of return upon the net investment in the project and the proportion of surplus earnings to be paid into and held in amortization reserves are reasonable as hereinafter specified; and

The Commission orders that:

(A) A license be issued to the applicant effective January 1, 1939, for the construction, operation, and maintenance of the project for a period of fifty (50) years from the effective date thereof, subject to the provisions of the Act and to the rules and regulations of the Commission thereunder;

[fol. 185] (B) The license shall contain the usual conditions and provisions for licenses for such projects and the following special conditions and provisions:

(i) Subject to approval by the Commission, the licensee shall complete Exhibits J, K, L, and M with respect to the location, design and description of transmission lines in accordance with the rules and regulations of the Commission and file the same with the Commission when and as the licensee determines upon the location and design of said lines. The licensee shall not commence construction of any transmission lines until the plans therefor have been approved by the Commission;

(ii) The licensee shall construct such extensions to the aprons below the spillway sections of the dam, or provide such other works for the protection of the spillways, as the Commission, on the basis of project operation experience, shall determine to be necessary or desirable;

(iii) Subject to the provisions of Section 13 of the Act, the licensee shall commence the construction of the project works on or before April 1, 1939, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete the same on or before December 31, 1940, including the initial installation of four 15,000-kilowatt generating units; and, consistent with the purposes of the project, shall thereafter install two additional generating units of approximately the same capacity at such time or

times as the Commission may direct so as to supply adequately the reasonable market demands for power;

[fol. 186] (iv) The licensee shall clear and keep clear the bottom and margins of the reservoir between elevations 755 and 699 feet above mean sea level and shall remove the tops of brush and trees growing at a lower elevation so that they shall not extend above said elevation 699;

(v) The licensee shall be authorized to operate the reservoir in such manner as to utilize storage space below elevation 745 for power production purposes, but not to utilize any storage space above said elevation 745 for power production purposes except during periods when the reservoir is being operated for the control of floods: The storage capacity between elevations 745 and 755 shall be expressly reserved for the control of floods. The licensee shall impound flood waters in the storage space above elevation 745 when, as, and in the manner directed by the Secretary of War or his authorized representative;

(vi) Subject to the provisions of paragraph (B)(v) above, the operation of the project by the licensee, so far as such operation may affect the use, storage, and discharge from storage, of waters, shall at all times be subject to the control of the Secretary of War under such rules and regulations as he may prescribe in the interests of navigation and flood control, and subject to the control of the Federal Power Commission under such rules and regulations as it may prescribe for the safety of the dam and for the protection of life, health, and property;

(C) The license shall provide that, after the first 20 years of operation of the project, 6% per annum is the specified rate of return on the net investment in the project under license for determining surplus earnings, in accordance with the provisions of Section 10(d) of the Act, for the establishment and maintenance of amortization reserves to be held until the termination of the license, or, in the discretion of the Commission, to be applied from time to time in reduction of the net investment in such project, and one-half of all surplus earnings in excess of 6% per annum received in any calendar year shall be paid into and held in such amortization reserves;

(D) Subject to the provisions of Section 10(e) of the Act, the licensee shall pay the following reasonable annual charges;

[fol. 187] (i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower on the ultimate installed capacity of 120,000 horsepower, plus two and one-half (2½) cents per 1,000 kilowatt-hours of energy generated by the project during the fiscal year ended June 30 preceding the submission of a bill therefor by the Commission, such charges to be subject to the proviso of Section 10(e) of the Act relating to the exemption from payment of annual charges by municipalities distributing power from a licensed project to the public without profit;

(ii) For the use, occupancy, and enjoyment of lands of the United States and of Indian tribal lands within the project area, such charges as may be fixed by the Commission pursuant to the provisions of the Federal Power Act;

(E) The maps, plans, and statements, designated in the application as Exhibits J (F. P. C. No. 1494-3), K (F. P. C. Nos. 1494-4 to 19, inclusive), L (F. P. C. Nos. 1494-40 to 79, inclusive), and M, be and they are hereby approved as part of the license, subject to the conditions specified in paragraph (B)(i), above.

By the Commission.

Leon M. Fuquay, Secretary.

[fol. 188] UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Commissioners: Clyde L. Seavey, Acting Chairman;  
Claude L. Draper, Basil Manly, John W. Scott.

Project No. 1494

April 28, 1939.

In the matter of GRAND RIVER DAM AUTHORITY

Order Modifying Authorization for Issuance of License

The Commission having adopted an order on January 27, 1939, authorizing the issuance of a license for Project No. 1494 to the Grand River Dam Authority; and

The Grand River Dam Authority having thereafter requested certain modifications of that order;

The Commission, having considered the aforesaid order and request, as well as the entire project record, finds that the modification hereinafter provided is appropriate and desirable in the premises; and

The Commission orders that:

Paragraph (B) (iv) of the aforesaid order of January 27, 1939, be and it is hereby modified to read:

(B) (iv) The licensee shall clear and keep clear the bottom and margins of the reservoir between elevations 699 and 745 feet above mean sea level, and shall remove the tops of brush and trees growing in that part of the reservoir site below said elevation 699 so that the tops thereof will not extend above said elevation 699; and shall, when and as directed by the Commission, clear any brush and trees from that part of the reservoir site between elevations 745 and 755 that may be killed by flooding.

By the Commission.

Leon M. Fuquay, Secretary.

[fol. 189]

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Commissioners: Clyde L. Seavey, Acting Chairman;  
Claude L. Draper, Basil Manly, John W. Scott.

Project No. 1494

July 5, 1939.

In the matter of GRAND RIVER DAM AUTHORITY

Order Further Modifying Authorization for Issuance of  
License

The Commission having adopted an order on January 27, 1939, authorizing the issuance of a license for Project No. 1494 to the Grand River Dam Authority, and having adopted an order amendatory thereto on April 28, 1939; and

The Grand River Dam Authority having filed a petition dated June 26, 1939, requesting certain further modifications of the aforesaid orders; and



The Commission, having considered its previous orders and having considered said request of June 26, 1939, together with the entire project record, finds that the modification herein provided is appropriate and desirable in the premises; and

The Commission orders that:

Paragraph B of the aforesaid order of January 27, 1939, as modified, be and it is hereby further modified to read:

(B) The license shall contain the usual conditions and provisions for licenses for such projects and the following special conditions and provisions:

(i) Subject to approval by the Commission, the licensee shall complete Exhibits J, K, L, and M with respect to the location, design and description of transmission lines in accordance with the rules and regulations of the Commission and file the same with the Commission when and as the licensee determines upon the location and design of said lines. The licensee shall not commence construction of any transmission lines until the plans therefor have been approved by the Commission;

[fol. 190] (ii) The licensee shall construct such extensions to the aprons below the spillway sections of the dam, or provide such other works for the protection of the spillways, as the Commission, on the basis of project operation experience, shall determine to be necessary or desirable;

(iii) Subject to the provisions of Section 13 of the Act, the licensee shall commence the construction of the project works on or before April 1, 1939, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete the same on or before December 31, 1940, including the initial installation of four 15,000-kilowatt generating units; and, consistent with the purposes of the project, shall thereafter install two additional generating units of approximately the same capacity at such time or times as the Commission may direct so as to supply adequately the reasonable market demands for power;

(iv) The licensee shall clear and keep clear the bottom and margins of the reservoir between elevations 745 and 699 feet above mean sea level and shall remove the tops of brush and trees growing at a lower elevation so that they shall not extend above said elevation 699;

(v) The licensee shall acquire all necessary lands, easements, and rights-of-way up to elevation 750; and raise all railroads affected by the project to such elevation above elevation 755 as may be necessary to provide for operation of the railroads when the reservoir is raised to elevation 755.

(vi) The licensee shall be authorized to operate the reservoir in such manner as to utilize storage space below elevation 745 for power production purposes but not to utilize any storage space above said elevation 745 for power production purposes except during periods when the reservoir is being operated for the control of floods. The storage capacity between elevations 745 and 755 shall be expressly reserved for the control of floods. The licensee shall impound flood waters in the storage space between elevations 745 and 755, and release flood waters therefrom, when, as, and in the manner directed by the Secretary of War, or his authorized representative: provided, that the licensee shall not be required to impound any water above elevation 750 until the United States has acquired the necessary flowage rights above that elevation;

(vii) Subject to the provisions of (B) (vi) above, the operation of the project by the licensee, so far as such operation may affect the use, storage, and discharge from storage, of waters, shall at all times be subject to the control of the Secretary of War under such rules and regulations as he may prescribe in the interests of navigation and flood control, and subject to the control of the Federal Power Commission under such rules and regulations as it may prescribe for the safety of the dam and for the protection of life, health, and property.

By the Commission.

Leon M. Fuquay, Secretary.

[fol. 192] [Stamp:] Federal Power Commission.—July 12, 1939

Resolution No. 299

Resolution of the Board of Directors of the Grand River Dam Authority accepting all the provisions and conditions of the Federal Power Act and of the further conditions imposed in the License to be issued by the Federal Power Commission in pursuance to its orders of January 27, 1939, April 28, 1939, and July 5, 1939, and authorizing Ray McNaughton, as Chairman of the Board of Directors, and Sam D. Rose, as Secretary of the Grand River Dam Authority, to execute in the name and on behalf of the Grand River Dam Authority the acceptance of said License.

Whereas, the Federal Power Commission has made and entered its Orders of January 27, 1939, April 28, 1939, and July 5, 1939, authorizing the issuance of a license to the Grand River Dam Authority to construct, operate and maintain a hydro-electric power and flood control project on Grand River in Oklahoma (Project No. 1494), in accordance with and under the terms, provisions and conditions set forth in a form of license this day submitted to the Board of Directors by the Federal Power Commission through its letter of transmittal of date July 6, 1939;

Now, Therefore, Be It Resolved by the Board of Directors of the Grand River Dam Authority that the said license in the form submitted be and the same is hereby accepted by the Grand River Dam Authority, and Ray McNaughton as Chairman of the Board of Directors, and Sam D. Rose as Secretary of the Grand River Dam Authority, be and they are hereby authorized and directed to execute in the name and for and on behalf of the Grand River Dam Authority the formal acceptance of said license in accordance with the terms, provisions and conditions of the Orders of the Federal Power Commission of January 27, 1939, April 28, 1939, and July 5, 1939; and

Be It Further Resolved that the Secretary of the Authority be and he is hereby directed to transmit to the Federal Power Commission said license executed in triplicate for execution by the Federal Power Commission, and

also to transmit to the Federal Power Commission four certified copies of this resolution.

[fol. 193]

Certificate

STATE OF OKLAHOMA,  
County of Craig, ss.

I, Sam D. Rose, Secretary of the Grand River Dam Authority, a conservation and reclamation district, and a public corporation organized and existing under the Laws of the State of Oklahoma, do hereby certify that the foregoing is a true and complete copy of a resolution passed by the Board of Directors of the Grand River Dam Authority at a recessed meeting thereof held in Vinita, Oklahoma, on the 11th day of July, 1939, at which meeting a quorum of the Board was at all times present and acting.

In Witness Whereof I have hereunto set my hand and affixed the corporate seal this 11th day of July, 1939.

Sam D. Rose, Secretary.



[fol. 194]

## EXHIBIT "D" TO COMPLAINT

IN THE DISTRICT COURT OF OTTAWA COUNTY, STATE OF OKLAHOMA

No. 15174

STATE OF OKLAHOMA, ex rel. LEON C. PHILLIPS, Governor of the State of Oklahoma and the State Highway Commission of the State of Oklahoma, Plaintiff,

VS.

GRAND RIVER DAM AUTHORITY: RAY McNAUGHTON, H. EICHENBERGER, Earl Ward, R. P. Colley, and M. Duncan, as Members of the Board of Directors of the Grand River Dam Authority; T. P. Clonts, General Manager of the Grand River Dam Authority; W. R. Holway, Chief Engineer of the Grand River Dam Authority; and Massman Construction Company, a Corporation, Defendants

RESTRAINING ORDER

The State of Oklahoma to: Grand River Dam Authority; Ray McNaughton, H. Eichenberger, Earl Ward, R. P. Colley, and M. Duncan, as Members of the Board of Directors of the Grand River Dam Authority; T. P. Clonts, General Manager of the Grand River Dam Authority; W. R. Holway, Chief Engineer of the Grand River Dam Authority; and Massman Construction Company, a Corporation.

This matter coming on for hearing before the Honorable Wm. M. Thomas, Judge of the District Court, upon the verified petition of the plaintiff filed herein, and it appearing to the Court that the plaintiff upon the facts alleged in said petition is entitled to the relief prayed for; and it further appearing that the said plaintiff will suffer irreparable damage and injury unless the said defendants and each of them and their agents, servants and employees or any one acting on their behalf, are restrained forthwith and without notice.

It is hereby ordered and adjudged that the said defendants, Grand River Dam Authority; Ray McNaughton, H. Eichenberger, Earl Ward, R. P. Colley and M. Duncan as

the members composing the Board of Directors of the Grand River Dam Authority; T. P. Clonts, General Manager of the Grand River Dam Authority; W. R. Holway, Chief Engineer of the Grand River Dam Authority; and Massman Construction Company, a corporation, their agents, servants and employees or any one acting on their behalf be and the same are hereby enjoined and restrained from closing and constructing Arch number six (6) of the dam being constructed by the defendants across Grand River in Mayes County, Oklahoma to any point above seven hundred [fol. 195] (700) foot elevation, said arch number six (6) being the last section or arch of said dam to be closed, and from closing or shutting the six (6) flood gates at the bottom of said dam until the further order of this court.

It is further ordered that the application of plaintiff for a temporary injunction against defendants is hereby set for hearing at 9 o'clock A. M. on the 20th day of March, 1940, at the District Court room in the City of Miami, County of Ottawa, Oklahoma.

It is further ordered that each of the defendants be served with a copy of this order forthwith.

Dated this 14th day of March, 1940.

Wm. M. Thomas, District Judge.

STATE OF OKLAHOMA,  
Ottawa County, ss:

I, Henry Austin, Court Clerk, do hereby certify that I have compared the foregoing copy of a Restraining Order, Case No. 15174, with the original now remaining on file in this office, and that the same is a full, true and exact copy thereof.

In witness whereof I have hereunto set my hand and affixed my seal this 14th day of March 1940. (Sic)

Henry Austin, Court Clerk. By — —, Deputy.

[Endorsed.] No. 15174. In the District Court of Ottawa County, Oklahoma. State of Oklahoma, Ex Rel. Leon C. Phillips, Governor of the State of Oklahoma, and the State Highway Commission of the State of Oklahoma, Plaintiffs, vs. Grand River Dam Authority, et al., Defendants. Restraining Order.

[fol. 196] IN THE DISTRICT COURT OF OTTAWA  
COUNTY, STATE OF OKLAHOMA

No. 15174

STATE OF OKLAHOMA, EX REL. LEON C. PHILLIPS, Governor  
of the State of Oklahoma, and the State Highway Com-  
mission of the State of Oklahoma, Plaintiff,

v.

GRAND RIVER DAM AUTHORITY; RAY McNAUGHTON, H. EICH-  
ENBERGER, Earl Ward, R. P. Colley, and M. Duncan, as  
members of the Board of Directors of the Grand River  
Dam Authority; T. P. Clonts, General Manager of the  
Grand River Dam Authority; W. R. Holway, Chief En-  
gineer of the Grand River Dam Authority; and Massman  
Construction Company, a corporation, Defendants

Petition

Comes now the plaintiff, the State of Oklahoma on the  
relation of Leon C. Phillips, Governor of said State, and  
the State Highway Commission of the State of Oklahoma,  
and for cause of action against the defendant, and each of  
them, alleges and states:

1. That the relator, Leon C. Phillips, is the duly elected,  
qualified and acting Governor of the State of Oklahoma,  
and as such Governor it is his duty, under the provisions of  
Section 8, Article 6, of the Constitution of Oklahoma, to  
cause the laws of said State to be faithfully executed, and  
the relator, State Highway Commission, is composed of  
S. H. Singleton, Chairman, George Meacham and H. E.  
Baily, members.

2. That the defendant, Grand River Dam Authority, is  
a corporate governmental agency of the State of Oklahoma;  
that the defendants, Ray McNaughton, H. Eichenberger,  
Earl Ward, R. P. Colley, and M. Duncan, are members of  
and compose the Board of Directors of the Grand River  
Dam Authority; that the defendant T. P. Clonts is General  
Manager of the Grand River Dam Authority; that the de-  
fendant, W. R. Holway, is Chief Engineer of the Grand  
River Dam Authority; that the defendant, Massman Con-  
struction Company, is a corporation duly organized and

existing under and by virtue of the laws of the State of [fol. 197] Missouri, and doing business in the State of Oklahoma under the laws of said State, with its principal place of business at —, in said State.

3. That pursuant to the provisions of Article 4, Chapter 70, Oklahoma Session Laws 1935, as amended by Articles 1 and 2, Chapter 70, Oklahoma Session Laws 1937, and Articles 2 and 3, Chapter 70, Oklahoma Session Laws 1939, the Grand River Dam Authority, through its above named Board of Directors, has let a contract for the construction of a dam across Grand River in Mayes County, Oklahoma, to the defendant, Massman Construction Company, which company under the direction and supervision of the defendants, T. P. Clonts, General Manager of the Grand River Dam Authority, and W. H. Holway, Chief Engineer of the Grand River Dam Authority, is now constructing a dam across Grand River in Mayes County pursuant to the terms of said contract; that said dam is nearing completion and, unless the defendants above named are enjoined and restrained by this court as prayed for herein, will be completed within the next few days, and when completed will impound the waters of Grand River and cause the same to overflow and inundate lands and property of the State of Oklahoma, to-wit; highways and bridges of said State in Mayes, Delaware and Ottawa Counties, and thereby take, damage and destroy the same and prevent the future use thereof.

4. That the Grand River Dam Authority has not acquired said State highways by condemnation or otherwise and has not relocated or required the relocation of the same, and, although due demand has been made for compensation for the taking, damaging and destruction of said highways, said authority has not paid, provided or tendered compensation therefor.

5. That said highways are an integral part of the State highway system of Oklahoma, and when same are inundated, taken, damaged and destroyed, as aforesaid, it will be necessary to relocate said highways by constructing other highways of a similar character in order to serve the traveling public and to complete the State Highway system upon as serviceable and efficient basis as existed prior to the inundation, taking, damaging and destruction of said high-



ways; that the damage that will be suffered by the State of Oklahoma by reason of the inundation, taking, damaging and destruction of said highways is the cost of locating and constructing the other highways above mentioned, which cost will be at least \$889,275.00; that although due demand has been made for said damages, said Authority has not paid, provided or tendered the same or any part thereof.

[fol. 198] 6. That the State of Oklahoma is entitled to be paid the damages which will be sustained by it, as aforesaid, before the Grand River Dam Authority inundates, in whole or in part, its said highways and bridges; that said Authority does not have available and will not hereafter have available funds sufficient to pay the damages that will be suffered by the State of Oklahoma as set forth in the last preceding paragraph of this petition; that by reason thereof the State of Oklahoma would be unable to collect the damages which will be sustained by it if its highways and bridges are inundated and would suffer irreparable injury to the extent above set forth by reason of the impossibility of actually collecting said damages; that the plaintiff is, therefore, without an adequate remedy at law.

7. That the defendants herein are about to and will, unless restrained and enjoined as prayed for herein, inundate, take, damage and destroy the highways and bridges of this State, as aforesaid, without compensating the State therefor in utter disregard of the sovereign and proprietary rights of the State of Oklahoma and its citizens and to the great and irreparable injury of both intra and interstate traffic; that said highways will be closed and many communities will be left without access to the outside world; that although the law clearly requires the defendants to relocate said roads they have negligently and wholly failed to do so or to make due and proper provision therefor.

Wherefore, plaintiff prays the Court for a judgment against the defendants, Grand River Dam Authority; Ray McNaughton, H. Eichenberger, Earl Ward, R. P. Colley and M. Duncan as the members composing the Board of Directors of the Grand River Dam Authority; T. P. Clonts, General Manager of the Grand River Dam Authority; W. R. Holway, Chief Engineer of the Grand River Dam Authority; and the Massman Construction Company, a corporation; and each of them, their agents, servants, em-

ployees or anyone acting on their behalf, permanently restraining and enjoining all and each of them, from preventing the free flowage of the waters of Grand River through and past the dam being constructed by them on said river, and from closing the last section of said dam; and from impounding the waters of said Grand River so as to inundate, destroy and make useless the State highways and bridges within the reservoir area of said dam, unless and until the Grand River Dam Authority pays to the State of Oklahoma the sum necessary to pay for the relocation and construction of said highways and bridges, and for such other and further relief as to the Court seems proper, and for costs. [fol. 199] Plaintiff further prays that the Court set this petition for hearing to determine whether or not a temporary injunction shall be issued and that at said hearing the Court grant the plaintiff temporary injunction enjoining the said defendants, and each of them, their agents, servants or employees, or anyone acting on their behalf, from doing any of the acts described in the first paragraph of this prayer.

Plaintiff further alleges that unless the said defendants, their agents, servants and employees, are forthwith and without notice enjoined and restrained from doing any of the acts described in the first paragraph of this prayer, the said plaintiff will suffer irreparable damage and injury; wherefore, plaintiff prays that a temporary restraining order against the defendants be granted forthwith.

Mac Q. Williamson, Attorney General; Randell S. Cobb, First Assistant Attorney General; Fred Hansen, Assistant Attorney General, Attorneys for Plaintiff.

STATE OF OKLAHOMA,  
Oklahoma County, ss:

Leon C. Phillips, being first duly sworn on oath states: That this action is brought upon his relation as Governor of the State of Oklahoma; that he has read the foregoing petition and is familiar with the contents thereof, and that the matters and things stated therein are true.

Subscribed and sworn to before me this — day of  
March, 1940. — — —, Notary of Public. My  
commission expires — — —, — — —. (Seal.)

STATE OF OKLAHOMA,  
County of Oklahoma, ss:

S. H. Singleton, being first duly sworn on oath states; That this action is brought upon the relation of the State Highway Commission of the State of Oklahoma of which he is a member and Chairman; that he has read the foregoing petition and is familiar with the contents thereof, and that the matters and things stated therein are true.

Subscribed and sworn to before me this — day of  
March, 1940. — — —, Notary Public. My com-  
mission expires — — —, — — —. (Seal.)

I hereby certify the within to be a true copy of original  
Restraining Order, with all the endorsements thereon.

Roger H. Waller, Sheriff, Deputy.

[fol. 200] IN UNITED STATES DISTRICT COURT

**Affidavits**—Filed March 19, 1940

**AFFIDAVIT OF JOHN M. CARMODY**

UNITED STATES OF AMERICA,  
District of Columbia, ss:

I, John M. Carmody, being duly sworn, depose and say, that I am a citizen of the United States, over the age of 21 and temporarily residing in the City of Washington, D. C.

I am, and have been since July 1, 1939, the Federal Works Administrator, with general direction and supervision over the administration of the Federal Works Agency and its constituent units, including the Public Works Administration.

Among the matters which have come to my personal and official attention in the performance of my functions aforesaid, is the administration of a certain Loan and Grant Agreement between the United States of America, acting through said Public Works Administration and the Grand River Dam Authority, of Oklahoma, whereby the United States, by way of loan and grant aggregating approximately \$20,000,000, is financing the construction by said Authority of a hydro-electric and flood control development on the



Grand River in Oklahoma. In relation to said project, I have conferred and corresponded with the members of the Board of Directors of the Grand River Dam Authority and with Leon C. Phillips, concerning the purported claim of the State of Oklahoma against said Authority for damages, estimated by said Governor as amounting to approximately \$850,000, which would result from the inundation by said Authority of certain State roads and highways in the proposed reservoir area.

In the early part of February, 1940, Governor Phillips, in my office in Washington, asked me whether the United States would make available to Grand River Dam Authority sufficient Federal funds to pay the cost of the alleged damages aforesaid. My reply was that I would make no promise or commitment until the matter had received careful study and investigation by me. I subsequently conferred with members of the Board of the Grand River Dam Authority and the General Manager of the Authority. At that conference, I was advised that Governor Phillips was insistent on arrangements being made by the Authority to pay the alleged damages referred to prior to the closing of the Dam. Subsequently, by letter dated February 23, 1940, I informed Ray McNaughton, Chairman of said Authority, that pursuant to my understanding that the Authority had made an agreement with the State Highway Commission by which the Authority would build the so-called Grove bridge in satisfaction of all claims for damages resulting from the inundation of highways, and my further understanding that such bridge had been built by said Authority pursuant to said agreement, I could find no warrant in the record for a repudiation of the original agreement or for giving away or for promising to give away Federal funds entrusted to me as Administrator. I sent a copy of this letter to Governor Phillips.

By letter dated March 4, 1940, T. P. Clonts, General Manager of Grand River Dam Authority, advised me of a conference held by representatives of the Authority with the Governor at which the Governor threatened to stop the closing of the Dam through the use of the State militia unless I as Administrator of the Federal Works Agency would make available and consent to the application of sufficient Federal funds to liquidate any judgment the State might obtain against said Authority in this matter. With said letter Mr. Clonts transmitted a resolution of the Board of



Directors requesting me to give such assurance. In reply to Mr. Clonts by letter dated March 7, 1940, I reiterated the position I had taken in my letter of February 23 to the Board of Directors of said Authority.

John M. Carmody.

Subscribed and sworn to before me this 18 day of March, 1940. Mary Satterfield, Notary Public in and for the District of Columbia. My commission expires 12-14-44. (Seal.)

[fol. 201] IN UNITED STATES DISTRICT COURT  
AFFIDAVIT OF MAXWELL H. ELLIOTT, JR.

DISTRICT OF COLUMBIA,  
City of Washington, ss:

Maxwell H. Elliott, Jr., being duly sworn, deposes and says:

I am a citizen of the United States of America, over the age of twenty-one and temporarily residing in the City of Alexandria, Virginia. As an attorney-at-law, I have been continuously in the service of the United States for the past six years, and am at present counsel for the Public Works Administration, a constituent agency of the Federal Works Agency of the United States of America, and the legal successor to the Federal Emergency Administration of Public Works. My official headquarters are in the City of Washington, District of Columbia.

As part of my official duties on behalf of said Administration, I have (and have had for some time past), under the supervision and direction of the Acting General Counsel, direct charge of all legal matters appertaining to or affecting in any way a certain hydro-electric and flood control project located on the Grand River in Oklahoma and now being constructed and developed by the Grand River Dam Authority of Oklahoma with funds advanced by the United States of America by way of loan and grant in an aggregate amount of approximately \$20,000,000.

From the official files and records of the Public Works Administration and from conversations with others who are personally familiar with the facts involved; in whole or in

part, particularly Ray McNaughton; H. Eichenberger, Earl Ward and R. P. Colley (being four of the five members of the Board of Directors of Grand River Dam Authority); W. R. Holway, Consulting Engineer for the Grand River [fol. 202] Dam Authority; R. L. Davidson, General Counsel for the Authority; R. V. L. Wright, erstwhile General Manager of the Authority; H. H. Ferguson, formerly Project Engineer (P. W. A.) on this project; Lester Marx, the present Project Engineer (P. W. A.) on this project; Clark Foreman, Director of the Power Division of the Public Works Administration; Colonel E. W. Clark, Acting Commissioner of Public Works Administration; and John M. Carmody, Public Works Administrator, I am informed of and verily believe the following facts and circumstances:

Pursuant to an allotment made with the approval of the President for such purpose, the Federal Emergency Administrator of Public Works, an agent of the United States of America, made a formal written offer, dated October 16, 1937, to Grand River Dam Authority, of Vinita, Oklahoma, to aid in financing the construction of a dam on the Grand River in the State of Oklahoma, to provide water storage for the purpose of flood control and of hydro-electric development; together with a hydro-electric generating plant and transmission lines including necessary equipment and the acquisition of the necessary land and rights of way therefor, by making a grant in the amount of forty-five per cent of the cost of said project upon completion, but not to exceed in any event the sum of \$8,437,000, and by purchasing certain obligations of said Authority in the aggregate principal amount of \$11,563,000.

Said offer was accepted in writing by said Authority on October 16, 1937. In part said offer was induced by and made upon the faith of a certain statute of the Legislature of the State of Oklahoma, namely, Article 4 of Chapter 70 of the Session Laws of Oklahoma for 1935, as amended by Article 5 of Chapter 70 of the Session Laws of Oklahoma for 1937.

Early in the year 1938, the members of the Board of Directors (or some of them) and other representatives of Grand River Dam Authority in two or more conferences with the members of and engineers for the State Highway Commission of the State of Oklahoma reached an agreement

[fol. 203] of settlement concerning the damages which would result from the inundation of the state roads, high ways and bridges traversing the proposed reservoir area, and for which damages the State Highway Commission claimed that said Authority was liable.

The terms of said agreement of settlement were that the Authority would relocate and construct the so-called Grove Bridge and that the State Highway Commission would bear the expenses of all other highway and bridge relocation and construction in the reservoir area.

The Grand River Dam Authority through its authorized representatives informed the duly authorized representatives of the Public Works Administration of the consummation of said agreement and the terms thereof. In reliance thereon the Public Works Administration, acting through said Ferguson, approved the withdrawal by said Authority for the construction of said Grove Bridge, the sum of approximately \$360,000 from a construction fund into which, by virtue of the terms of its loan and grant agreement with the United States, the Authority is required to deposit all proceeds from the sale of its bonds to the United States and the proceeds of all grants received from the United States. These comprise the only sources of funds for the Authority at the present time. The Authority proceeded to construct and has completed the construction of said Grove Bridge.

The following facts and circumstances are within my personal knowledge except to the extent otherwise indicated. On or about November 8, 1939, the aforesaid members of the Board of Directors of said Authority, in my presence, informed E. W. Clark, Acting Commissioner of Public Works that one Leon C. Phillips, Governor of Oklahoma, had some time previous announced his intent to repudiate the agreement of settlement previously reached by and between the State Highway Commission and the Grand River [fol. 204] Authority; that said Phillips had told them (or some of them) that any such conversations as may have taken place among the various officials of said Highway Commission and said Authority as individuals, were oral and could not have, in his opinion, resulted in an agreement, oral or otherwise, between said Authority and said Commission; and that in his opinion said Commission could not in any event be bound by any such proposed oral agreement



because no official action thereon was taken at any meeting of said Commission.

Colonel E. W. Clark advised said members of the Board of Directors of said Authority that the Public Works Administration, having already approved the withdrawal of approximately \$367,000 from the construction fund to satisfy the agreement of settlement reached with the Highway Commission, would not advance any further monies to said Authority for the purpose of providing for any alleged damages to state roads and highways.

At a conference which said Foreman and I held with said Phillips in his office at the State Capital of Oklahoma on the evening of November 30, 1939, said Phillips reiterated the statement attributed to him above. He added that his estimate of the damages was \$850,000 and that he, as Governor of Oklahoma, would not allow the dam to be closed, and would prevent its closing by any means within his power, unless and until the Public Works Administration had advanced to said Authority sufficient funds to cover said estimated damages and said Authority had paid or agreed to pay for said estimated damages. At such conference said Phillips caused a stenographer to be present and to take down a complete stenographic report of the conference. Subsequently, said Foreman, in writing, requested said Phillips to furnish him with a copy of such transcript. Said Phillips, in writing, replied that no transcription of the stenographer's notes had been made, but that he would cause one to be prepared, if Foreman requested.

[fol. 205] From inspection of the files of the Public Works Administration and from conversations with said Foreman and John M. Carmody, Federal Works Administrator, I am informed and verily believe that on or about February 17, 1940, said Phillips, by a letter addressed to Mr. Carmody, requested the United States of America to make available to said Authority funds sufficient to meet the damages to the state roads, alleged as aforesaid; that this matter was discussed with Mr. Carmody by said members of the Board of Directors of said Authority on February 20, 1940;

That Mr. Carmody both orally and in writing informed said members of the Board of Directors, and in writing informed said Phillips, that he could find no warrant for the Authority or the Governor of Oklahoma to repudiate the



original agreement of settlement, and in consequence could find no justification for giving away or promising to give away any further Federal funds for the purpose of paying for the alleged damages.

Maxwell H. Elliott, Jr.

Subscribed and sworn to before me this 18 day of March, 1940. Mary Satterfield, Notary Public in and for the District of Columbia. (Seal.) My commission expires, 12-14-44.

[fol. 206] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF CLARK FOREMAN

UNITED STATES OF AMERICA,  
District of Columbia, ss.

Clark Foreman, being first duly sworn, deposes and says that he resides at 1333 21st Street, N. W., Washington, D. C., and that he is employed as Director of the Power Division of the Public Works Administration, Washington, D. C., and that the application of the Grand River Dam Authority filed with the Public Works Administration on August 21, 1935, for a loan and grant of \$20,000,000 to construct a flood control and hydro electric project on the Grand River, Docket Okla. 1097-P-DS, has at all times been handled in said division under his direction and supervision.

Deponent further says that, by reason of his employment as aforesaid, he had conversation at various times and at various places with the members of the Board of Directors and with the manager of the Grand River Dam Authority and that during the course of such conversations he was advised by the said Board of Directors and said manager that the Highway Commission of the State of Oklahoma entered into an agreement during the early portion of the summer of 1938, providing that the said Highway Commission would care for all expenses of relocating all state roads in the reservoir area of the project, if the Grand River Dam Authority would build the so-called Grove bridge across the middle of the proposed lake.

Deponent further says that, upon information and belief,

and verily states the facts to be that pursuant to the aforesaid agreement by and between the Grand River Dam Authority and the Highway Commission of the State of Oklahoma the said Authority submitted to the said Highway Commission plans of the proposed bridge called for by the aforesaid agreement and that the said Highway Commission made surveys and submitted to said Authority final plans showing the location for the proposed highways to the bridge.

Deponent further says that the Public Works Administration approved such plans and approved the expenditure of \$369,083 for the construction of the proposed bridge.

Deponent further says, upon information and belief, and verily states the facts to be that subsequent to such approval by the Public Works Administration, said Highway Commission advertised for bids for the construction of some of the proposed new roads which would run to the Grove bridge, that subsequent to the time when the present Governor entered office such advertisements and notices were withdrawn and no contracts were let for the construction of the new roads.

Deponent further says that during September and October 1939 he was advised by various members of the Board of Directors and the manager of the Grand River Dam Authority that the Highway Commission of the State of Oklahoma had repudiated its agreement with the Grand River Dam Authority at the request of the incumbent Governor of the State of Oklahoma.

Deponent further says that the Grand River Dam Authority has fully performed its part of the said agreement and has completed construction of the Grove bridge pursuant to its agreement with the Highway Commission.

[fol. 207] The Deponent further says that on the evening of November 30, 1939, he met the Governor of Oklahoma in the Executive Office of the State Capitol in Oklahoma City, and that at that time and place the Governor of Oklahoma asked the Deponent whether the Public Works Administration would pay additional amounts of money for highway construction in the basin above the Grand River Dam in an amount estimated to be approximately \$850,000. At that time and place the Deponent told the Governor of the State of Oklahoma that it was the Deponent's understanding that the Public Works Administration had definitely decided there were no more Federal funds available to ad-

vanee to the Authority for such purposes. To the best of my recollection and belief, the Governor thereupon said that unless the Federal Government was willing to put up this money the Dam would never be completed while he was Governor of Oklahoma.

Clark Foreman.

Subscribed and sworn to before me this 18 day of March, 1940. Mary Satterfield, Notary Public in and for the District of Columbia. (Seal.) My commission expires 12-14-44.

[fol. 208] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF ALEXANDER SPEER

DISTRICT OF COLUMBIA,  
City of Washington, ss.

I, Alexander Speer, being duly sworn depose and say that I am a citizen of the United States and over the age of twenty-one, and temporarily reside in the City of Alexandria, Virginia.

I am a civil, mechanical and electrical engineer, holding a degree in civil engineering from Princeton University, and having studied mechanical and electrical engineering both at Princeton University and the Colorado School of Mines.

From December, 1908, with the exception of approximately two years, until April, 1938, I have been continuously engaged in the operation of electrical public utility property, having been president of the Florida Power Commission, the Georgia Power & Light Company, and the Virginia Public Service Company. In connection with my duties with these companies, I had supervision of practically all construction work of a major and minor character, including the construction of steam-electric generating stations and hydro-electric generating stations, and the construction of a hydro-electric project consisting of the usual generating facilities, concrete structures and dams in the State of Florida. I am conversant with the principles of construction of concrete and earthen dams and, during ap-

proximately the past two years, as Chief Engineer of the Power Division of the Public Works Administration, a constituent agency of the Federal Works Agency of the United States of America, I have been intimately engaged in reviewing the design of hydro-electric projects financed by the Public Works Administration for public power districts and authorities, including, among others, the \$40,000,000 [fol. 209] hydro-electrical development in South Carolina, known as the Santee-Cooper Project, the \$40,000,000 hydro-electric and flood control project of the lower Colorado River Authority, at and near Austin, Texas; and several hydro-electric and irrigation projects in the State of Nebraska, having an aggregate construction cost of more than \$50,000,000.

I have performed similar duties in connection with the hydro-electric and flood control development being constructed on the Grand River in Oklahoma by the Grand River Dam Authority of Oklahoma pursuant to a loan and grant from the United States of America aggregating approximately \$20,000,000.

In October, 1939, I personally visited and inspected said Grand River Dam project, including the dam, and both before and since that date and up to the present time, have regularly and closely observed the progress of construction of the dam by the review of reports, plans, photographs of the progress of the work, and by repeated conferences and conversations with P. W. A. engineers, the Authority's engineers and others personally familiar with the physical work.

From these sources, I am informed, and verily believe that said dam is physically ready for closing and in fact that the initial work of closing has been begun and could be completed within four weeks. Records indicate that the Grand River is subject to very severe floods from time to time, the exact date of which can not be predicted, and might follow a protracted period of rainfall. Should a flood of large proportions occur while the closure of the dam is incompletd, a very substantial damage to the incompletd portion of the dam and to other appurtenances and structures would be certain to occur. The arch portion of the dam is not designed to be subjected to the spilling of water over its crest; consequently, should a flood occur when any of the arches are incompletd to a height of elevation of ap-



proximately 745 feet, the flood water might overflow the [fol. 210] crest of these arches. There would be a probability of a partial vacuum being created within the arch causing destructive vibration and also a scouring of the foundation between the buttresses which is not designed nor protected to withstand such scouring effects. The result of a flood of considerable proportions and duration would most certainly cause a severe damage to the buttress structures and foundations and might cause a collapse of any incompleated arches. The steel bridge immediately downstream from the dam, which is used in the construction of the dam, would be, in part, demolished. In the event of the failure of any or several of the incompleated arches an enormous volume of water would be released which would most certainly overtop the coffer-dam surrounding the power house and cause severe damage to that structure and the equipment being installed.

It is entirely possible that the damage which might result from one flood of proportions which the river has already experienced could easily result in damage of approximately \$870,000, made up as follows: upwards of \$720,000 to the dam itself; damage to the construction bridge and other structures below the dam of upwards to \$50,000, and possibly damage of upwards to \$100,000 to the power house.

In addition to the physical damage to the dam and structures below the dam, the release of an enormous volume of water under a high head through the breach caused by the failure of the dam arches would be most certain to cause severe damage to property for many miles below the dam, and possible loss of life.

Furthermore, there would be actual monetary damage due to the delay in making the closure of the dam. Unless the closure is made before the spring floods, upon which the Authority depends to fill its reservoir, it is entirely probable that there will not be sufficient flow in the river to fill the reservoir until the Spring of 1941. Consequently, the Authority would lose the revenue that it could anticipate during the last part of 1940 and first part of 1941, to be derived from the sale of 175,000,000 kilowatt hours of firm power. In the event the closure is not made immediately the project will remain incompleated, until, in all probability, the late Spring of 1941. During this period interest will be running upon the bonds issued by the Au-

thority to finance a part of the cost of this project, and such interest will amount to approximately \$450,000.

Alexander Speer.

Subscribed and sworn to before me this 18 day of March, 1940. Mary Satterfield, Notary Public in and for the District of Columbia. (Seal.) My commission expires, 12-14-44.

[fol. 212] IN UNITED STATES DISTRICT COURT

STATE OF OKLAHOMA,  
County of Craig, ss:

AFFIDAVIT OF W. R. HOLWAY

I, W. R. Holway, of lawful age, being first duly sworn, state under oath as follows:

1. That I am a member of the firm of Holway and Neuffer, Consulting Engineers, employed by the Grand River Dam Authority in October 1937 to do all engineering work in connection with the construction of the Pensacola Dam on the Grand River in Mayes County, Oklahoma. That I have devoted my entire time since October 1937 to the direction of the design and construction of the project and have acted as Chief Engineer for the Authority in all matters pertaining to the said project. That I have been practicing engineering for 21 years, almost entirely on projects involving the construction of dams. That for over 20 years I have been actively interested in the Grand River and its flood characteristics and prior to the inception of this project I made special studies for a similar project to be located on the Grand River by private interests.

2. That the dam has been completed except for the following work:

(a) Three arches on the extreme east end of the arch section. These arches are above Elev. 730, the spillway level.

(b) Adjusting of the Tainter gates and setting the seals. This can be done after the closure is made.

(c) Completion of bridges on top of the dam. This can be done after closure is made.

(d) Arches 1 to 10, inclusive, are in various states of completion. All but arch #6 are at Elev. 700, or above. Arch #6 should arrive at Elev. 700 Wednesday night, March 20, and pouring on #6 will be stopped unless the restraining order of the State Court is removed.

(e) Six temporary openings are left, three in arch #7 and three in arch #8. These openings are at the bottom of the dam.

[fol: 213] That the Contractor's plan of closure, which we have approved, calls for having all of the arches above Elev. 700 before the temporary openings are closed. That under this program, within a week the Contractor will probably be ready to close the temporary openings—all except the sluice gate opening provided by the Authority, under the Contract, which will not be closed until the level of the lake has reached Elev. 678. That as soon as the temporary openings are closed the remaining arches should be completed as rapidly as possible to prevent over-topping in case of flood.

3. That if the Contractor is prevented from closing these temporary openings when he is ready to close them, it is impossible to predict when he will be able to close them, and closure might be delayed for many months. That if this situation occurs there probably will be disastrous damage to the structure due to water passing through the temporary openings at extremely high velocities.

That if the Contractor is enjoined from completing arch #6 above Elev. 700 as well as prevented from closing the temporary openings, the dam will be subjected to two grave dangers:

(a) Over-topping of arch #6 which will result in a fall of water vertically from Elev. 700 to the tailwater elevation of approximately 630, or a 70-ft. drop.

The concrete pavement which was built by the Authority between buttresses #6 and #7 was not designed for this vertical drop but was designed to protect the foundation rock against erosion from waters flowing through arch #6 while it was entirely open. Water dropping from this height for any length of time would break up the thin concrete slab and seriously damage the foundation rock between buttresses #6 and #7. If six or seven feet of rock between the buttresses were destroyed the structure would be endan-



gered since the foundation of the buttresses goes only to this level.

(b) Erosion of the rock between buttresses #7 and #8 and #8 and #9 and erosion downstream from these but-[fol. 214] tresses is almost certain to occur if for any length of time water is allowed to pass through the temporary openings at the high velocities which will result from any sizable floods coming into the reservoir. If the water level reaches Elev. 700 the velocities through the openings themselves will be from 50 to 55 ft. per sec. The velocity in the channel between the buttresses below the temporary openings would be 17 ft. per sec. At this time there would be approximately 25,000 ft. per sec. discharging from these openings.

4. That in six out of the 14 years of measured flow in the Grand River, floods approximating or exceeding 100,000 sec.-ft. have occurred during the spring months. That studies have been made of the rise of water in the lake as a result of several theoretical floods. With a flood peak of 100,000 sec.-ft. coming into the lake, with the base of the hydrograph five days, the total run-off during the flood 400,000 acre-ft., and with the temporary openings fully open, the water would rise to Elev. 690; with a 150,000 sec.-ft. flood coming into the reservoir with the same base of hydrograph, with a total run-off of 600,000 acre-ft., the lake level would reach Elev. 703.

5. That equally bad conditions, and probably worse, would occur with a smaller peak to the flood but with a longer base to the hydrograph. In January and February 1937, two succeeding floods reaching a peak of only 50,000 sec.-ft. would have raised the water to Elev. 682 with the temporary openings the only means of escape for the water.

6. That if the closure of the dam is delayed, in addition to the damage which will be done to the structure, there is a possibility that a portion of the structure might fail from the undermining of its foundations, and a consequent disastrous flood in the valley below might occur.

7. That if closure of the dam is delayed at this time, high water stored behind the dam may prevent a closure until after the spring floods have receded, in which case the dam could not be closed until late summer, and the Authority



would lose the opportunity to store water with which to run [fol. 215] the turbines in the power plant. That this might result in the loss of a whole year's revenue from the operation of the power plant. That the value of a year's power output is approximately \$1,000,000.00.

W. R. Holway.

Subscribed and sworn to before me this 19th day of Mch., 1940. Frances Nichols, Notary Public. My commission expires: 1-5, 1942. (Seal.)

[fol. 216] IN UNITED STATES DISTRICT COURT,

STATE OF OKLAHOMA,  
County of Craig, ss:

AFFIDAVIT OF VICTOR H. COCHRANE

I, Victor H. Cochran, of lawful age, being first duly sworn, state under oath as follows:

1. That I have been retained by Holway and Neuffer, Consulting Engineers, as consultant on the design and construction of the Pensacola Dam on the Grand River in Mayes County, Oklahoma. That in the years 1925 and 1926 I made a report for private interests covering the hydro-electric development of the site of the Pensacola Dam and the reservoir now under construction. That I have been spending three or four days each week at the dam site since March 1, 1939. That I have been engaged in engineering practice since graduation in the year 1901.

2. That six temporary openings, 8 ft. x 10 ft. in size, have been left in the bottom of arches #7 and #8 for the purpose of passing the flow of the river prior to final closure. That all of the arches except arch #6 have been constructed to Elev. 700, or above, and #6 will probably be built to that height by Wednesday night, March 20. That the space between buttresses #6 and #7 downstream from the position of arch #6 has been paved with reinforced concrete.

3. That the completion of arch #6 and the closure of six temporary openings should be made as speedily as practicable for the reason that the most frequent large floods occur

in the months of April, May, and June. That if the final closure is prevented or delayed there will be grave danger that the structure will be disastrously damaged. That if the water over-tops arch #6 for any considerable length of time, the reinforced concrete apron and the rock beneath it may be destroyed and carried away by the force of the water falling from a height of approximately 70 ft. That if flood waters are allowed to flow through the temporary openings for any considerable length of time the bed rock [fol. 217] downstream from these openings will be eroded with consequent damage to the foundations of the adjacent buttresses. That if the water level in the reservoir rises to Elev. 700, or above, the velocity through these temporary openings will be about 55 ft. per sec. and the velocity in the channel between buttresses will be approximately 17 ft. per sec., corresponding to a discharge of 25,000 cu. ft. per sec.

4. That during the record period, 1925 to 1939, inclusive, there have been six floods with peaks approximating or exceeding 100,000 cu. ft. per sec. during April, May, and June. That studies of a hypothetical flood having a peak inflow of 100,000 cu. ft. per sec. and lasting five days, with a total run-off of 400,000 acre-ft., and with the six temporary outlets fully opened, show that water would rise approximately to Elev. 690. That with a flood 50% greater, having a total run-off of 600,000 acre-ft., the lake level would rise to Elev. 703. That in case of floods with smaller peaks having approximately the same total run-off, but with a longer period, the results would be approximately the same.

5. That if closure is not made in advance of the anticipated spring floods there is grave danger that the failure to impound flood waters will result in loss of approximately a year's revenue from the sale of power.

Victor H. Cochrane.

Subscribed and sworn to before me this 18th day of March, 1940. Frances Nichols, Notary Public. My commission expires: 1-5, 1942. (Seal.)

[fol. 218] IN UNITED STATES DISTRICT COURT

STATE OF OKLAHOMA,  
County of Craig, ss:

## AFFIDAVIT OF LESTER M. MARX

I, Lester M. Marx, of lawful age, being first duly sworn states under oath as follows:

1. That I am the duly appointed, acting and empowered Project Engineer of the Public Works Administration, and since January 1938 have been officially assigned to the supervision of the Project known as the Pensacola Dam on the Grand River in Mayes County, Oklahoma; that I have examined the general design, plans and specifications of the said Project from an engineering standpoint; that I am a graduate engineer and have practiced engineering since 1921.

2. That it is my firm belief that if the construction of said Project is interrupted at this stage, by the failure to close the temporary openings located in Arches 7 and 8 and the discontinuance of concrete work on the arches which have not reached elevation of approximately 745 feet, that extensive and serious damage will occur to the structure of the dam in its present stage of construction.

3. That in the event water is allowed to pass through the temporary openings for a prolonged period of time, that there will be sustained extensive and serious loss through the inability to generate power, due to the loss of the power pool.

4. That it is my belief there is imminent danger of the aforesaid damage to the structure and damage through loss of the power pool in the event that the temporary openings in arches 7 and 8 are not closed and the construction work on the unfinished arches allowed to proceed without interruption, since it is highly probable that a concentration of water in great proportions at the dam site will occur at this time of the year.

Lester M. Marx.

Subscribed and sworn to before me this 19 day of  
Mch, 1940. Frances Nichols, Notary Public. My  
Commission Expires 4-5-42. (Seal.)

[fol. 219] IN UNITED STATES DISTRICT COURT

STATE OF OKLAHOMA,  
County of Mayes, ss:

AFFIDAVIT OF WALTER PANTER

I, Walter Panther, of lawful age, being first duly sworn states under oath, as follows:

1. That I am and have been since January, 1937 the sheriff of Mayes County, Oklahoma;

2. That prior to the arrival of the National Guard at the site of the construction of what is known as Pensacola Dam on the Grand River in Mayes County, Oklahoma, there had been no insurrection, rioting, tumult, or violence of any kind at the aforesaid dam site or generally in or about the said Project.

3. That local law enforcement authorities have been ready, able and willing at all times to preserve order and that order was being preserved.

Walter Panther.

Subscribed and sworn to before me this 18th day of March, 1940. Ben Murdock, Notary Public. My commission expires July 7, 1943. (Seal.)

[fol. 220] IN UNITED STATES DISTRICT COURT

STATE OF OKLAHOMA,  
County of Craig, ss:

AFFIDAVIT OF FLOYD E. CONWAY

I, Floyd E. Conway, of lawful age, being first duly sworn states under oath as follows:

1. I am at present, and have been continuously since November, 1938, the Chief Resident Engineer Inspector at the site of the construction of what is known as Pensacola Dam on the Grand River in Mayes County, Oklahoma;

2. That prior to the arrival of the National Guard, which occurred on March 13, 1940, there had been no insurrection, rioting, tumult, or violence of any kind at the aforesaid dam site or generally in or about said Project;



3. That there had been no lawlessness or lawless action at the aforesaid dam site or generally in or about the said Project except insofar as actions of the National Guard were illegal;

4. That local law enforcement authorities have been ready, able and willing at all times to preserve order and that order was being preserved.

Floyd E. Conway.

Subscribed and sworn to before me this 18th day of March, 1940. Argus P. Richesin, Notary Public.  
My commission expires 3-8-43. (Seal.)

[fol. 221] IN UNITED STATES DISTRICT COURT

STATE OF OKLAHOMA,  
County of Craig, ss:

AFFIDAVIT OF LEE HENDRIX

I, Lee Hendrix, of lawful age, being first duly sworn states under oath as follows:

1. I am at present, and have been continuously since October, 1939, the Chief Construction Engineer at the site of the construction of what is known as Pensacola Dam on the Grand River in Mayes County, Oklahoma;

2. That prior to the arrival of the National Guard, which occurred on March 13, 1940, there had been no insurrection, rioting, tumult, or violence of any kind at the aforesaid dam site or generally in or about said Project;

3. That there had been no lawlessness or lawless action at the aforesaid dam site or generally in or about the said Project, except insofar as actions of the National Guard were illegal;

4. That local law enforcement authorities have been ready, able and willing at all times to preserve order and that order was being preserved.

Lee Hendrix.

Subscribed and sworn to before me this 18th day of March, 1940. Argus P. Richesin, Notary Public.  
My commission expires March 8, 1943. (Seal.)

[fol. 222] IN UNITED STATES DISTRICT COURT

STATE OF OKLAHOMA,  
County of Craig, ss:

AFFIDAVIT OF PETER J. CHAMALES

I, Peter J. Chamales, of lawful age, being first duly sworn states under oath as follows:

1. That I am a duly qualified and acting attorney at law, resident in the City of Vinita, Craig County, Oklahoma;
2. That all courts which have jurisdiction in the area which includes the site of the Project known as Pensacola Dam, on the Grand River in Mayes County, Oklahoma, are open and functioning and that there has been and is no impediment to the issuance or execution of their processes.

Peter J. Chamales.

Subscribed and sworn to before me this 18th day of March, 1940. Argus P. Richesin, Notary Public.  
My commission expires March 8, 1943. (Seal.)

[File endorsement omitted.]

[fol. 223] IN UNITED STATES DISTRICT COURT

Civil Action No. 351

[Title omitted]

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE—  
Filed March 21, 1940

It appearing from the verified complaint herein and from the affidavits filed in support thereof that:

1. The United States has a property interest in the Grand River dam flood control and hydro-electric project and particularly in the Grand River dam;

2. There is imminent and immediate danger of the destruction of such property interest of the United States having a monetary value of not less than \$11,563,000 by the acts of the defendants herein restrained;

[fol. 224] 3. The defendants herein are not, either severally or in the aggregate, financially able to compensate the United State for the full damage which may be caused by said acts and which is now imminently threatened;

4. The defendants have been and are injuring and threaten to injure the property of the United States by:

- (a) the use of illegal military force;
- (b) securing a restraining order in a friendly and non-adversary proceeding to which the United States is not a party and cannot be made a party;

5. The defendants unless restrained are about to destroy the subject matter of this controversy, and such destruction is immediately threatened;

6. There is not sufficient time to give notice to the defendants prior to the issuance of this order, and immediate and irreparable injury would result to the property interest of the United States unless this order were made prior to such notice;

7. The United States has no adequate remedy except equitable relief from this Court.

It Is Ordered That pending further order of the Court:

(a) The defendants and each of them are restrained from any interference with the construction or closing of the Grand River Dam;

(b) The defendants and each of them are restrained from proceeding in any way in the suit numbered 15174 now pending in the District Court of Ottawa County, Oklahoma, entitled State of Oklahoma ex rel. Leon C. Phillips, Governor, and State Highway Commission v. Grand River Dam Authority and others, except to cause to be vacated any restraining orders or injunctions granted in said suit, [fol. 225] and except to cause said suit to be dismissed or to be removed to this Court; and are further restrained from taking any steps toward the enforcement of any such restraining order or injunction in said suit, or from commencing any other proceedings seeking the same or substantially similar relief;

(c) The defendants and each of them are restrained from attempting to enforce or from attempting to receive any benefit from any and all restraining orders or injunctions

heretofore granted in such suit, or from obtaining any order continuing in force any such restraining orders or injunctions;

(d) The defendants Phillips and Ledbetter are restrained from using any military force pursuant to the declaration of martial law promulgated by the defendant Phillips on the 13th day of March, 1940;

(e) The defendants Phillips and Ledbetter are restrained from causing the Oklahoma National Guard or any part thereof or any military force whatsoever to interfere with or prevent the construction or closing of the Grand River dam;

(f) The defendants and each of them are restrained from using or causing to be used any force, military or otherwise, or any process, judicial or otherwise (other than by proper application in the present cause), to interfere with or prevent the construction or closing of the Grand River dam;

(g) The defendants and each of them are restrained from taking any step whatsoever, impairing the specific, prompt, and timely performance by the Grand River Dam Authority of its license from the Federal Power Commission and its covenants in the indenture dated as of April 1, 1938, with the First National Bank of Miami;

(h) The defendants and each of them are restrained from taking any action in frustration of the purpose of the grants made by the Public Works Administration to the Grand [fol. 226] River Dam Authority and the loans made by the Public Works Administration to said Authority, or which will prevent the performance by said Authority of its covenants with the Public Works Administration;

(i) The defendants and each of them are restrained from taking any action which will injure or tend to injure the property rights or the security of the United States in said Grand River Dam.

It Is Further Ordered That this order shall be binding on the defendants and each of them and upon their officers, agents, servants, subordinates, employees and attorneys and upon any person in active concert or participation who receive notice of this order.

It Is Further Ordered That the defendants and each of them show cause before this court, if any there be, at 10



A. M. on the 25th day of March, 1940 at Vinita, Oklahoma, why an order should not be made herein granting a temporary injunction as prayed in the complaint herein.

And It Is Further Ordered That the sending of a pre-paid telegram in the following form to any defendant shall constitute reasonable notice hereof:

By order this day entered by the United States District Court for the Northern District of Oklahoma, you have been restrained from interfering with the construction or closing of the Grand River Dam; from proceeding in any way in that certain suit now pending in the District Court of Ottawa County, Oklahoma, entitled "State ex rel. Phillips et al. v. Grand River Dam Authority et al.", except to vacate any restraining orders or injunctions therein or [fol. 227] to cause said suit to be dismissed or removed to this Court; from taking any steps to enforce or to continue in force or to receive any benefit from any such order in such suit or from commencing any other proceeding seeking the same or similar relief; from using any force, military or otherwise, to interfere with or prevent the construction or closing of the Grand River Dam; from taking any action to impair the performance by the Grand River Dam Authority of its covenants with the United States and its agencies; and from taking any action which will injure or tend to injure the property rights of the United States in the Grand River Dam. Case ordered for hearing on temporary injunction at 10 A. M. on March 25th, 1940, at Vinita, Okla., before the United States District Court. The order of the United States District Court provides that this telegram shall constitute notice thereof to you. Service of a copy of said order will later be made.

By Order of the Court. H. P. Warfield, Clerk.

Vinita, Oklahoma, this 19th day of March, 1940, at 2:18 P. M. F. E. Kennamer, United States District Judge.

[fol. 228] I received this writ at Vinita, Okla. on March 19, 1940 and served the same on the same date at Vinita, Okla., personally by delivering a true copy hereof to the within named:

Grand River Dam Authority by leaving a true copy hereof with Ray McNaughton, Chairman, and on Ray McNaugh-

ton, H. Eichenberger, Earl Ward, M. Duncan, and W. R. Holway,

Service on Massman Construction Company was accepted by Dick Wheatley, Attorney of record for said Company.

All other defendants named herein, except, those served by Deputy Stanley, were not found in my district.

Jno. P. Logan, U. S. Marshal. By A. R. Cottle, Dep.

### Return

I received this writ at Vinita, Okla. on Mar. 19, 1940 and served same personally on March 19, 1940 as follows.

On The First National Bank of Miami, Okla. by delivering a copy hereof to V. Pres. of said bank.

On T. P. Clonts individually and as Gen. Mgr. at Vinita, Ok.

On R. P. Colley, Ind. & as Director.

Jno. P. Logan, U. S. Marshal. By Virgil B. Staley, Dep.

[File endorsement omitted.]

[fol. 229] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 351

MOTION TO DISMISS ON BEHALF OF LEON C. PHILLIPS, INDIVIDUALLY AND AS GOVERNOR, ET AL.—Filed March 25, 1940

Comes now the defendants, Leon C. Phillips, individually and as Governor; Mac Q. Williamson, individually and as Attorney General; Louis A. Ledbetter, individually and as Adjutant General; The State Highway Commission of Oklahoma, S. H. Singleton, George Meacham and H. E. Bailey, individually and as members of the State Highway Commission, and move severally as follows:

1. That the complaint be dismissed in so far as it seeks an injunction against the above named defendants, or any of them from prosecuting the case entitled State of Oklahoma, ex rel. Leon C. Phillips, Governor of the State of

Oklahoma, and the State Highway Commission of the State of Oklahoma, vs. Grand River Dam Authority, et al., No. 15174 in the District Court of Ottawa County, Oklahoma, [fol. 230] for the reason that Section 379, Title 28, U. S. C. A. (Section 265 Judicial Code) provides as follows:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy. (R. S. § 720; Mar. 3, 1911, c. 231, § 265, 36 Stat. 1162.)"

2. That the complaint be dismissed in so far as it seeks to enjoin the above named defendants, or any of them, from prosecuting the case entitled State of Oklahoma, ex. rel. Leon C. Phillips, Governor of the State of Oklahoma, and the State Highway Commission of the State of Oklahoma, vs. Grand River Dam Authority, et al., No. 15174 in the District Court of Ottawa County, Oklahoma, for the reason that said complaint in that regard is in effect a suit against the State of Oklahoma, and by virtue of Section 341, Title 28, U. S. C. A. (Section 233 Judicial Code) the Supreme Court of the United States has exclusive jurisdiction of all controversies to which a State is a party; except between a State and citizens of other States, or aliens, in which latter cases it has original, but not exclusive jurisdiction.

3. That the complaint be dismissed in so far as it seeks to enjoin the defendants, Leon C. Phillips, individually and as Governor, and Louis A. Ledbetter individually and as Adjutant General, from using the militia of the State of Oklahoma to prevent the obstruction and destruction of the State Highways of the State of Oklahoma by inundation for the reason that said complaint in that regard is in effect a suit against the State of Oklahoma, and by virtue of Section 341, Title 28, U. S. C. A. (Section 233 Judicial Code) the Supreme Court of the United States has exclusive jurisdiction of all controversies to which a State is a party; except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it has original but not exclusive jurisdiction.

4. That the complaint be dismissed against each and all of the above named defendants for the reason that the Court is without jurisdiction over the action herein, and is

without jurisdiction to grant the relief prayed for in this proceeding.

[fol. 231] 5. That the complaint be dismissed against each and all of the above named defendants for the reason that the complaint does not state facts sufficient to constitute a valid cause of action in equity against these defendants either severally or jointly.

Mac Q. Williamson, Attorney General; Randell S. Cobb, First Assistant Attorney General. Address: State Capitol, Oklahoma City, Oklahoma; Fred Hansen, Assistant Attorney General. Dudley, Hyde, Duvall & Dudley, Attorneys at Law, Oklahoma City, Oklahoma, Attorneys for the defendants, Leon C. Phillips, Governor; Mac Q. Williamson, individually and as Attorney General; Louis A. Ledbetter, Adjutant General; The State Highway Commission, and S. H. Singleton, George Meacham and H. E. Bailey, as members of the State Highway Commission. Dudley, Hyde, Duvall & Dudley, Attorneys at Law, by J. B. Dudley. Address: Ramsey Tower, Oklahoma City, Oklahoma; Ramsey, Martin and Logan, Attorneys at Law, by Vincent Martin. Address: National Bank of Tulsa, Tulsa, Oklahoma, Attorneys for the defendants, Leon C. Phillips, Louis A. Ledbetter, S. H. Singleton, George Meacham and H. E. Bailey as individuals.

Service of the above Motion to Dismiss is acknowledged this 25th day of March, 1940, at 9:50 a. m.

For the plaintiff, The United States of America, Whit Y. Mauzy, United States District Attorney. [fol. 232] For the defendants, Grand River Dam Authority, Ray McNaughton, H. Eichenberger, Earl Ward, R. P. Colley and M. Duncan, individually and as Directors of the GRDA; T. P. Clonts, individually and as General Manager of the GRDA; W. R. Holway, individually and as Consulting Engineer of the GRDA. R. L. Davidson, Attorney at Law. For Massman Construction Company, Inc., Richard L. Wheatley, Attorney at Law. For the First National Bank of Miami, E. C. Fitzgerald, Attorney at Law.

[File endorsement omitted.]



[fol. 233] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 351

SEPARATE ANSWER OF DEFENDANT MASSMAN CONSTRUCTION  
COMPANY—Filed March 25, 1940

1. This defendant admits the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 26, 27, 29, 30, 31 and 32 of the complaint.

2. This defendant admits all of the allegations of paragraph 25 of the complaint, save and except the following statement or allegation in line three thereof, to-wit: "in further pursuance of the scheme above referred to". As to this last named and excepted allegation, this defendant [fol. 234] alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

3. This defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the complaint, concerning its co-defendants. But this defendant states it is opposed to any interference with the completion of this contract and in no manner consented to or acquiesced in the bringing of said action in the District Court of Ottawa County, Oklahoma, and this defendant is opposed to the injunctive relief asked for in said action.

4. This defendant admits, on information and belief, the allegations contained in paragraph 19 of the complaint.

5. This defendant admits all of the allegations contained in the first sentence of paragraph 20 of the complaint. As to the second or last sentence of said paragraph 20, this defendant states that it has no knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

6. This defendant further admits and states that as the general contractor with said Grand River Dam Authority for the construction of the dam in the complaint referred to, which contract was dated July 8, 1938, this defendant is placed under heavy penalty for its failure to complete

the work required under said contract, including the construction and completion of said dam within the time fixed and in accordance with the terms and provisions of said contract; that it is not a party to the controversy or controversies referred to in the complaint, and has no interest therein; and that its only interest in the matter is the right to carry on and complete its said contract with the Grand River Dam Authority without obstruction or restriction.

7. That this defendant has a large force of men—over 1000 in number, now at work on said dam project and maintains a large and expensive supervisory organization in order that it might carry on its said work; that it is required [fol. 235] to and now has on said project a large amount of equipment, including rented and leased equipment, for use in the performance and completion of said contract; that it has other valuable equipment, including railroad locomotives, cars and other railroad equipment under rental contracts with the owners thereof; that this defendant has entered into subcontracts with other parties for the furnishing of workmen, equipment and material for use in the completion of said contract, which will be likewise affected with this defendant if this defendant and its operations under its contract aforesaid be permitted to be enjoined or stopped by injunction or by use of the militia; that said 1000 men now working for this defendant will be thrown out of employment, and that this defendant would suffer great loss in payments to its supervisory, engineering and office force on said project, which it would be compelled to retain, and in the payment of machinery and equipment rentals to others on said machinery so rented during the time of said shut down, and its subcontractors would likewise suffer in the same manner.

8. This defendant further states that said contract and its working schedule calls for the closure of said dam, including five of the six temporary openings therein, as soon as all arches have been carried above elevation 700; that said temporary openings were designed to be closed at said time, not only for the safety of said dam but also in order to effectually catch, hold and impound the waters expected from spring rains and floods.

9. This defendant states that the construction of said dam has progressed to the stage where said dam would

be jeopardized and subject to being destroyed or badly damaged if the completion of the structure is interfered with whatsoever, due to spring rains and floods which are usual and to be expected any time after the first day of March; and that if the operations of this defendant under its said contract, are shut down as threatened and sought, its loss would be irreparable.

[fol. 236] 10. This defendant further admits and states that far greater damage would be sustained by this defendant, the plaintiff and others interested in the completion of said project, and the public at large, by reason of the stoppage of said work and the performance of said contract by this defendant, than would result to the owners of the public roads in the reservoir area of said dam and project, by permitting the completion thereof.

11. That the jurisdiction of this Court, over the subject matter, should be retained until the final completion of said project and the acceptance of said dam and power house aforesaid.

Wherefore, this defendant prays that this Court accept and retain jurisdiction of this controversy, determine the rights of the parties therein and grant to plaintiff the injunctive relief sought in plaintiff's complaint.

Respectfully submitted,

Roy W. Crimm, Richard L. Wheatley, Vinita, Okla.;  
James E. Burke, Attorneys for Defendant, Mass-  
man Construction Company.

[File endorsement omitted.]

[fol 237] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 351

ANSWER OF DEFENDANTS GRAND RIVER DAM AUTHORITY,  
ET AL.—Filed March 25, 1940

The defendants Grand River Dam Authority, a public corporation authorized, created and existing under the laws of Oklahoma, Ray McNaughton, H. Eichenberger,

Earl Ward, R. P. Colley and M. Duncan, individually and as Directors of the Grand River Dam Authority, T. P. Clonts, individually and as General Manager of the Grand River Dam Authority, and W. R. Holway, individually and as Consulting Engineer for Grand River Dam Authority, for answer to the complaint of the plaintiff filed in this cause on March 19, 1940, admit that this is a suit of civil nature [fol. 238] and that this court has original jurisdiction under Paragraph (1) of Section 24 of the Judicial Code, as amended.

They further admit the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the complaint.

The defendants admit that on October 16, 1937, the United States, through its Federal Emergency Administrator of Public Works, made a formal written Offer to the Authority to aid in the financing of the Project by Loan and Grant; that Exhibit "B" attached to and made a part of the complaint is a true and correct copy of said Offer; that on the 16th day of October, 1937, the Authority accepted said Offer by resolution, a true and correct copy of which is hereto attached and made a part hereof, and marked for identification "Defendants' Exhibit 1".

The defendants allege that the Authority, under the authority of the Enabling Act (Article 4, Chapter 70, Oklahoma Session Laws of 1935, as amended), authorized the issuance of its 4% Revenue Bonds in the aggregate principal amount of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00); a transcript of the proceedings for the issuance of said bonds was presented to the Attorney General of the State of Oklahoma for his examination and approval; that the said Attorney General approved said bonds as valid obligations of the Authority and so certified as required by law; that said bonds were registered by the State Auditor of the State of Oklahoma, as required by law; that pursuant to the Loan and Grant Agreement the United States has purchased from the Authority, and the Authority has sold and delivered to the United States, Eleven Million Five Hundred Sixty-Three Thousand Dollars (\$11,563,000.00) aggregate principal amount of said bonds; that in order to pay the principal of and interest on said bond issue of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) the Authority executed and delivered to the defendant The First National Bank of Miami, a Trust Indenture dated as of April 1, 1938, pledging all of



the revenues of the Authority, from whatever source derived, to the payment of the principal of and interest on said bonds. Exhibit "A" attached to and made a part of the complaint is a true and correct copy of said Trust Indenture. The defendants admit that the United States has [fol. 239] purchased and paid for the said Eleven Million Five Hundred Sixty-Three Thousand Dollars (\$11,563,000.00) of bonds under and in accordance with the said Loan and Grant Agreement, and has paid to the Authority the sum of Six Million Five Hundred Sixty-Two Thousand Five Hundred Dollars (\$6,562,500.00) on account of the Grand provided for in said Loan and Grant Agreement:

The defendants admit paragraph 14 of the complaint, and also paragraph 15, with the qualification that the said dam would not have been completely constructed by April 15, but is now substantially completed, and would have been closed by April 15, 1940.

The defendants admit that the Authority secured a license from the Federal Power Commission to build said dam in Grand River, which is a tributary of the Arkansas River, which is a navigable water of the United States; and to impound the waters of the Grand River for the purpose of the Project; that Exhibit "C" attached to and made a part of the complaint is a true and correct copy of said license. In this connection the defendants allege that the Authority, upon the insistence of the Public Works Administration, filed with the Federal Power Commission, on December 15, 1937, its declaration of intention to construct a dam and hydro-electric power plant in Grand River near the Town of Pensacola in Mayes County, Oklahoma, for the purpose of flood control and development of hydro-electric power; that a hearing was had before the Federal Power Commission on said declaration of intention, at which hearing the Authority offered evidence and contended that the Federal Power Commission did not have jurisdiction over this Project, but thereafter the Federal Power Commission made and entered an Order holding that the construction and operation of this Project in Grand River would affect interstate commerce and that the Federal Power Commission had jurisdiction over the Project; that thereafter, on May 3, 1938, the Authority filed with the Federal Power Commission its application for a license for said Project, and on the 26th day of July, 1939, said license was duly issued, after the Authority had, by resolution of its Board

of Directors on the 11th day of July, 1939, accepted all of the provisions and conditions of the Federal Power Act and all the conditions imposed in said license, and the defendants admit that the Authority is required to build the Project structures in Grand River in accordance with the provisions of said license and in accordance with the plans and specifications which have been approved by the Federal Emergency Administrator of Public Works, the Secretary of War, the Chief of Engineers of the United States Army and the Federal Power Commission; that under said license the Authority must complete said Project on or before December 31, 1940.

The defendants admit that it is necessary for the Authority to substantially complete said dam by March 30, 1940, which is the completion date of the Project under the Loan and Grant Agreement, as extended by existing waivers, and to commence the flooding of the area included in the Project immediately before the expected onset of the Spring floods in April, 1940, and admit further that unless said dam can be closed promptly the normal Spring floods in the Grand River will endanger and may seriously damage or destroy said dam, and that unless said dam can be closed promptly and the reservoir area flooded, it will probably be impossible to impound sufficient waters for the power operations of the Authority for the coming year, and accordingly, there will be no revenues available for payment of principal or interest on said bonds; that the revenues derivable from said Project are the only security which the holders of outstanding bonds of the Authority have for the payment of the principal or interest thereon. In this connection defendants allege that Massman Construction Company is now ready to close said dam and start the impounding of waters; that any delay in the completion of the remaining arches or closing the temporary openings in the dam through which the waters of the river are now flowing might cause immeasurable and irreparable damages to the contractor, the Authority and the holders of outstanding bonds.

The defendants admit the allegations contained in paragraph 19 of the complaint. In this connection the defendants allege that the Authority, recognizing its future liability to the extent and in the manner set forth in the Enabling Act, for damages for the inundation and over-flowing of roads and bridges in the basin area which may arise from

[fol. 241] construction and operation of the Project, made a settlement of its possible liability to the State of Oklahoma for the inundation and overflowing of State roads and bridges in the basin area with the Highway Commission of the State of Oklahoma, through the construction of what is known as the Grove Bridge by the Authority at a cost to the Authority of Three Hundred Sixty-Nine Thousand and Eighty-Three Dollars (\$369,083.00); that the Authority let a contract for the construction of said bridge to the lowest and best bidder after public notice that said contract was approved by the United States, acting by and through the Federal Emergency Administrator of Public Works; and the cost of said bridge was paid for by the Authority with funds received from the United States under the Loan and Grant Agreement, with the approval of the United States, acting through the Federal Emergency Administrator of Public Works; that the plans and specifications for the construction of said bridge were prepared by Holway & Neuffer, Engineers for the Authority, and submitted to the Highway Commission of the State of Oklahoma for its approval; that said plans and specifications were examined by the engineers for the Highway Commission and certain changes therein were suggested and recommended by said engineers and said plans and specifications were changed and altered in accordance with said suggestions; that conferences were held between the engineers for the Authority and representatives of the Highway Commission with respect to the location of the said bridge, and the location thereof was approved by said representatives of the Commission; that said Highway Commission sent its engineers into the field and surveyed and staked out on the ground the location of new roads to and from said bridge to replace those to be inundated; that conferences were held between certain members of the Board of Directors of the Authority and its Chief Engineer on the one side, and certain members of the Highway Commission and its Engineers on the other side, relative and looking to the settlement of the anticipated liability of the Authority for the overflowing and inundation of State roads and bridges in the basin area, and as a result of said conferences it was agreed verbally between a majority of the Members of the Highway Commission and a majority of the members of the Board of [fol. 242] Directors of the Authority that the construction of said Grove Bridge in accordance with the plans and

specifications, modified as suggested by the engineers for the Highway Commission and the location approved by the engineers for the Highway Commission and a majority of the members of said Commission, should and would constitute and be a full liquidation of any and all liability of the Authority to the State of Oklahoma for the inundation and overflowing of State roads and bridges in the basin area; that in pursuance of said understanding and agreement the Authority proceeded to construct said bridge at said location in accordance with the said plans and specifications, relying in good faith upon the said understanding and agreement that the construction of said bridge at said location in accordance with said plans and specifications, would constitute and be a full satisfaction and liquidation of the Authority's liability to the State of Oklahoma on account of the inundation of said roads and bridges; that said bridge was so constructed and completed at a cost to the Authority of Three Hundred Sixty Four Thousand Eighty-Three Dollars (\$364,083.00), and in addition thereto the Authority expended the sum of approximately Five Thousand Dollars (\$5,000.00) on the approaches to said bridge, which was not contemplated in said agreement but entirely outside thereof; that after the completion of said bridge the Authority notified the Highway Commission that said bridge had been completed in accordance with said understanding and agreement and that the Authority was ready to turn said bridge over to the Highway Commission for the State; that the Authority is still able and willing to turn said bridge, fully completed, over to the Highway Commission for the State; that said settlement was fair and equitable and in an amount far in excess of the actual investment of the State for the roads and bridges which will be inundated.

The defendants further allege that after the contract for the construction of said bridge had been let, and while the construction work thereon was in progress, a change took place in the State Administration and the Honorable Leon C. Phillips became Governor and the present personnel of [fol. 243] the Highway Commission was appointed by him; that the new Highway Commission attempted to repudiate the settlement made by the Authority and the old Highway Commission and asserted a claim against the Authority, under the Enabling Act, for inundating State roads and bridges in the basin area in an amount in excess of One



Million Six Hundred Sixty-One Thousand Dollars (\$1,661,000.00), and the Governor threatened to prevent closure of the dam and flooding of the basin area unless the Authority or the United States settled and paid the damages claimed by the Highway Commission; that the Authority asserted and contended at all times that it had settled and liquidated its liability to the State through the construction, at its own expense, of the Grove Bridge, but in an effort to settle amicably the controversy with the Highway Commission, held conferences with the Highway Commission and the Governor and sought to induce the Governor and the Highway Commission to accept the Grove Bridge in full satisfaction of the Authority's liability and to carry out the agreement with the former Highway Commission; that after the failure of said negotiations the entire Board of Directors of the Authority conferred with the officials of the Public Works Administration in Washington, including the Administrator of the Federal Works Agency, for the purpose of securing a compromise of the controversy and the approval by the United States of the payment of an additional amount out of the funds furnished by the United States under the Loan and Grant Agreement in settlement of the State's claim; that after the failure of the negotiations in Washington, the Governor, on March 13, 1940, declared martial law in the area surrounding the dam site and ordered the Adjutant General of the State to occupy said area with the military forces of the State and to maintain the same against all interference with a unit or units of the National Guard and to stop all work on the Grand River Dam; that troops were dispatched to the military zone pursuant to such Order on the 13th day of March, 1940, and interfered with the work on said dam, by giving orders and directions to the Massman Construction Company, a contractor, with respect to the closing of the dam structure.

[fol. 244] The defendants admit that at no time before or after said proclamation of martial law, or during the pendency thereof, was there any insurrection, rioting, tumult or violence in or about the said dam site or project area, and admit that at no time were the local law enforcement authorities unable to perform their duties or the civil courts closed. The defendants admit that said declaration of martial law and the action taken thereunder by the military forces of the State interfered with the construction

work on said Project and the closure of said dam. The defendants admit that on the 15th day of March, 1940, most of the National Guard stationed at the dam site were withdrawn, but certain military personnel remained as observers and continued to exercise some degree of martial control. The defendants admit that the Governor has not revoked his declaration of martial law and admit that the Governor has threatened to prevent, by any means, the closing of the dam until the claim of the State has been paid in advance or secured in advance. In this connection the defendants allege that they had no part in the declaration of martial law or the enforcement of the military order.

The defendants admit that on March 14, 1940, the Governor, Leon C. Phillips, and the State Highway Commission, consisting of the defendants Meacham, Singleton and Baily, acting through the Honorable Mac Q. Williamson, as Attorney General, caused to be filed in the District Court of Ottawa County, Oklahoma, the suit numbered 15,174, entitled State of Oklahoma, ex rel. Leon C. Phillips, Governor, and the State Highway Commission vs. the Grand River Dam Authority, Ray McNaughton, H. Eichenberger, Earl Ward, R. P. Colley and M. Duncan, as Members of the Board of Directors of the Grand River Dam Authority, T. P. Clonts, General Manager, W. R. Holway, Chief Engineer, of the Grand River Dam Authority, and Massman Construction Company, Inc., referred to in paragraph 25 of the complaint. They admit that said suit seeks an injunction against the closure and completion of the dam. They also admit that a temporary restraining order was issued ex parte by the Honorable William M. Thomas, as Judge of the District Court of Ottawa County, Oklahoma, and the cause was set for hearing on the issuance of a [fol. 245] temporary injunction for Wednesday, March 20, 1940; they admit that the United States was not made a party to said suit nor given notice of any of the proceedings therein, and that Exhibit "D" attached to and made a part of the complaint is a true and correct copy of the petition and restraining order in said suit. In this connection the defendants allege that on March 20, 1940, when the hour arrived for hearing on the application for temporary injunction in said suit, this suit had been filed in this Court and the restraining order issued herein had been served on the parties litigant in that case and the Judge of said

Court took no further proceedings therein, and the restraining order theretofore issued in said Court became inoperative and of no force or effect.

The defendants admit that the plaintiff in said suit seeks a permanent injunction against the Authority to enjoin the Authority from completing and closing the dam structures, and admit that if said injunction is granted and complied with the Authority will be unable to comply with some of the covenants contained in the Loan and Grant Agreement, and will be unable to comply with some of the terms and conditions of the Federal Power Commission License, and will be unable to fulfill some of the terms and conditions of the Trust Indenture, and that the granting and enforcement of such injunction would seriously endanger, if not actually destroy, the security of the bonds of the Authority now outstanding, but the defendants deny that said proceeding in the District Court of Ottawa County, Oklahoma, is a friendly suit, or not a genuine controversy or an adversary proceeding. They admit that the defendants McNaughton, Eichenberger, Ward, Colley and Duncan were appointed members of the Board of Directors of the Authority by the Governor and are subject to removal by him for inefficiency, neglect of duty or misconduct in office, upon ten (10) days written notice as provided in Section 3 of Article 4, Chapter 70, Session Laws of Oklahoma, 1935, as amended. They admit that defendants Singleton, Meacham and Baily were appointed members of the Highway Commission by the Governor, by and with the consent of the State Senate, and are removable by the Governor, all as provided in Section 2 of Article 1, Chapter 50, Session [fol. 246] Laws of Oklahoma, 1939.

The defendants deny that they have in any way interfered with or delayed the completion or the closing of the dam structures, but allege that they have striven with all their ability to complete this Project within the completion date so as to impound the flood waters of the river which are expected in the near future. (They deny that they have had anything to do with the institution of the said suit in the District Court of Ottawa County, Oklahoma, by the Governor and the Highway Commission, but allege that the Board of Directors of the Authority, prior to the filing of this suit in the Federal Court, instructed and directed the General Counsel for the Authority to vigor-

ously contest said suit in the State Court and prevent, if possible, the granting of any injunction in that case.)

The defendants further allege that under subdivision (h) of Section 2 of the Enabling Act the Authority is granted, expressly and unequivocally, the right, power and privilege to overflow and inundate public lands and public property; that State roads and bridges are public property over which the Legislature of the State has supreme control and the constitutional right to deal with the same as it sees fit; that the Legislature has imposed upon the Authority, under subdivision (h) of Section 2 of the Enabling Act, a liability in damages to the State of Oklahoma for any injury occasioned by the overflowing or inundating of State roads and bridges in the basin area, and under subdivision (p) of Section 2 of the Enabling Act the Legislature has prescribed the manner and method by which such liability may be determined, and in Section 9 of the Enabling Act has prescribed how such liability, when ascertained, shall be paid, to-wit: (1) out of the revenues received by the Authority in respect of its properties subject to any prior lien thereon conferred by any resolution theretofore adopted as in the Act provided authorizing the issuance of bonds, or (2) out of the proceeds of sale by the Authority of its bonds payable solely from such funds, if the Board shall so determine.

The defendants further allege that under the Loan and Grant Agreement and the Trust Indenture the Authority cannot expend any of the funds received from the United States, either by way of Loan or Grant, except upon the [fol. 247] certification by the Project Engineer, P. W. A., that such disbursements are in accordance with the Certificate of Purposes previously filed with and accepted by the United States, and are reasonable in amount. They further allege that the United States has refused to approve any Certificate of Purposes or the expenditure of any of said funds for the payment of the asserted claim of the State for inundation of State roads and bridges in the basin area or the relocation or reconstruction of the same.

These defendants admit that they, severally and in the aggregate, are financially unable to respond in damages to the United States to the extent of Eleven Million Five Hundred Sixty-Three Thousand Dollars (\$11,563,000.00).

Wherefore these defendants respectfully ask this Honor-



able Court to declare, under the Federal Declaratory Judgment Act, the rights of the Authority, the State and the United States involved in the actual controversy existing over the liability of the Authority for inundating and overflowing State roads and bridges in the Basin area of this Project and that when said rights have been declared, appropriate relief be granted for the protection and enforcement of said rights by this Court, and ask further for all other relief to which these defendants may be entitled.

Grand River Dam Authority, by R. L. Davidson,  
General Counsel.

[fol. 248] *Duly sworn to by Ray McNaughton. Jurat omitted in printing.*

I hereby certify that a true and correct copy of the foregoing answer was served personally on these plaintiffs and the defendants on the 25th day of March, 1940, by the delivery of true and correct copy thereof to their respective attorneys of record in this cause:

R. L. Davidson.

[File endorsement omitted.]

[fol. 249] DEFENDANTS' EXHIBIT 1 TO ANSWER

#### Resolution No. 4

Accepting an Offer of the United States of America to Aid,  
by way of Loan and Grant, in Financing a Project  
Therein Described

Whereas, the United States of America has offered to aid the Grand River Dam Authority, Oklahoma, by way of loan and grant, in financing the construction of a project fully described in said offer; and,

Whereas, it is deemed desirable that the said offer be accepted by the Grand River Dam Authority, Oklahoma, at this time;

Now, Therefore, be it Resolved by the Board of Directors of the Grand River Dam Authority, Oklahoma;

1. That the offer of the United States of America, reading as follows:

"Federal Emergency Administration of Public Works

Washington, D. C.

Dated: Oct. 16, 1937.

Docket No. Okla. 1097-P-DS.

Grand River Dam Authority.

Vinita, Oklahoma.

1. Subject to the Terms and Conditions (PWA form No. 230) which are made a part hereof, the United States of America hereby offers to aid in financing the construction of a dam to provide water storage for the purpose of flood control and of hydroelectric power development, together with a hydroelectric generating plant and transmission lines, including necessary equipment and the acquisition of the necessary lands and rights of way therefore (herein called the "Project"), by making a grant to Grand River Dam Authority (herein called the "Applicant") in the amount of 45 per cent of the cost of the Project upon the completion, as determined by the Federal Emergency Administrator of Public Works (herein called the "Administrator") but not to exceed, in any event, the sum of \$8,437,000.00 and by purchasing, at the principal amount thereof plus accrued interest thereon, from the Applicant, obligations of the description set forth below (or such other description as shall be mutually satisfactory) in the aggregate principal amount of \$11,563,000.00 out of an authorized issue of \$12,500,000.00;

(a) Obligor: Grand River Dam Authority.

(b) Type: Negotiable, special obligation, water and electric power revenue, serial, coupon bond;

(c) Denomination: \$1,000;

(d) Date: October 1, 1937;

(e) Interest rate and interest payment dates: 4 per cent per annum, payable semi-annually on April 1 and October 1 in each year;

[fol. 250] (f) Place of payment: At the office of the Trustee hereinafter mentioned or (at the option of the holder) at a bank or trust company in the Borough of Manhattan, City and State of New York;

(g) Registration privileges: As to principal only;

(h) Maturities: On October 1 in amounts and years as follows:

\$63,000 in 1942  
 100,000 in 1943 to 1946, inclusive,  
 200,000 in 1947 to 1950, inclusive,  
 300,000 in 1951 to 1955 inclusive,  
 400,000 in 1956 to 1960, inclusive,  
 500,000 in 1961 to 1965, inclusive,  
 600,000 in 1966 to 1971, inclusive,  
 700,000 in 1972:

(i) Redemption provisions, if any: Redeemable in the inverse order of maturities, at the option of the Applicant, in whole or in part (selection as between bonds of the same maturity to be by lot) on any interest payment date after not less than 30 days' published notice, at a redemption price equal to the principal amount and accrued interest, plus a premium of  $\frac{1}{4}\%$  of such principal amount for each year or fraction thereof from the redemption date to the date of maturity, such premium, however, not to exceed 5% of such principal amount;

(j) Payable as to both principal and interest from and secured by a first pledge of the gross income and revenues of the Applicant, from whatever source derived, including the gross income and revenues from the Project, and all improvements, replacements, renewals and extensions thereof, and additions thereto (all such income and revenues of the Applicant to be set aside in a special fund to be used for the payment of reasonable and proper expenses of maintenance and operation and the principal of and interest on the bonds and for other proper corporate purposes), and issued under and additionally secured by an indenture and deed of trust from the Applicant to a bank or trust company satisfactory to the Administrator, as Trustee, said indenture to be in form satisfactory to the Administrator, and to provide for the issuance of not exceeding \$12,500,000, principal amount of bonds maturing as follows:

\$70,000 in 1942,  
 110,000 in 1943 to 1946, inclusive,  
 210,000 in 1947 to 1950, inclusive,

320,000 in 1951 to 1955, inclusive,  
430,000 in 1956 to 1960, inclusive,  
540,000 in 1961 to 1965, inclusive,  
650,000 in 1966 to 1971, inclusive, and  
800,000 in 1972.

2. This Offer is made subject to the following special conditions:

(a) Anything in this Offer or in said Terms and Conditions to the contrary notwithstanding, the United States of America shall be under no obligation to take up and pay for any of the obligations herein described or to make any payment on account of the said Grant unless and until

First the Applicant shall have satisfied said Administrator, in such manner (whether by judicial determination or otherwise) as the Administrator may deem advisable, as [fol. 251] to the validity and constitutionality of the Grand River Dam Authority Act and all amendments thereto (including specifically Article 1 and Article 2 of Chapter 70 of the Session Laws, 1937, of the State of Oklahoma), as to the validity of the organization of the Applicant and its power to construct and operate the Project as proposed, as to the validity of the proceedings for the authorization, issuance and proposed sale of the said obligations and in the proceedings for their authorization, issuance and sale and as to the validity of the contract between the Applicant and the United States of America to be created by the acceptance of this Offer, including in all cases, specific determinations of such questions concerning the foregoing as the Administrator or his counsel may present;

Second the Applicant shall submit such further data as the Administrator may require to confirm the estimates of cost set forth in the amended application of the Applicant, and showing that the final cost of the Project, including generating facilities with a sufficient capacity to liquidate the loan, will not exceed \$20,000,000;

Third the Administrator shall be satisfied as to the extent and validity of the water rights of the Applicant, including the right of the Applicant to store the necessary waters for the operation of the Project, and to use such waters for irrigation and for the development of electric energy;



(b) No additional funds, whether from the Federal Emergency Administration of Public Works or from any other department, bureau or agency of the Federal Government, will be requested by or on behalf of the Applicant in connection with the Project or any subsequent additions or improvements thereto.

(c) The cost of all lands, rights of way and easements shall be excluded from the cost of the Project for the purpose of computing the Grant, and the Applicant shall submit evidence satisfactory to said Administrator that such lands, rights of way and easements as are required for the construction and operation of the Project can be purchased or acquired at a cost not to exceed \$1,250,000;

(d) No payments shall be made to the Grand-Hydro Interests, so-called, from any funds made available by the United States of America, except payments for such lands as may be required for the Project, the cost of which lands shall be subject to the approval of the Administrator;

(e) The Applicant will begin work on the Project as early as possible but in no event later than January 1, 1938, and will complete the Project with all practicable dispatch, and in the event by July 1, 1939;

(f) The Administrator may designate a Project Engineer and a Project Auditor as his representatives on the Project and may require that no disbursements shall be made from the Construction Account except such as the Project Engineer shall certify to be in accordance with the Certificate of Purposes previously filed with and accepted by the Government and to be reasonable in amount. If the Administrator shall so request, the Applicant will pay the salaries and expenses of the Project Engineer and Project Auditor;

(g) The Applicant will submit estimates of all proposed expenditures for periods of not less than three months each, which shall be approved by the Administrator; and

(h) The Applicant shall appoint a General Manager who shall have charge of the construction of the Project and who shall at all times during the construction period be satisfactory to the Administrator.

United States of America, Federal Emergency Administrator of Public Works, by (S.) E. W. Clark, for the Administrator."

[fol. 252] be and the same is hereby in all respects accepted by the Grand River Dam Authority, Oklahoma.

2. That the Chairman and Secretary of the Board of Directors be and they are hereby authorized to do all things necessary and/or convenient to communicate the acceptance of said Offer to the United States of America, through the Federal Emergency Administration of Public Works.

[fol. 253] IN UNITED STATES DISTRICT COURT

Civil Action No. 351

[Title omitted]

ORDER OVERRULING MOTION TO DISMISS—Filed May 9, 1940

On this 25th day of March, 1940, there comes on for hearing motion filed herein March 25, 1940, of the defendants Leon C. Phillips, individually and as Governor of the State of Oklahoma; Mac Q. Williamson, individually and as Attorney General of the State of Oklahoma; Louis A. Ledbetter, individually and as Adjutant General of the National Guard of the State of Oklahoma; and S. H. Singleton, George Meacham, and H. E. Bailey, individually and as Members of the State Highway Commission of the State of Oklahoma, to dismiss the complaint, and the Court having heard and considered said motion and the argument of counsel thereon,

It Is the Order of This Court, unanimously, that said motion be, and the same is hereby, overruled and exceptions allowed.

Made and Ordered Entered this 25th day of March, 1940.

R. L. Williams, United States Circuit Judge, F. E. Kennamer, United States District Judge, Alfred P. Murrah, United States District Judge.

[File endorsement omitted.]

[fol. 254] IN UNITED STATES DISTRICT COURT

No. 351—Civil

[Title omitted]

MINUTE ENTRY—March 25, 1940

Now on this 25th day of March, A. D. 1940 the above cause comes on for hearing on application for temporary injunction. All parties represented by counsel. Thereupon, permission is granted Plaintiff to amend service by delivering copies of Exhibits to Defendants. And thereafter, it is ordered by the Court that Complaint of Plaintiff be and it is hereby dismissed as to State Highway Commission but jurisdiction retained for all other purposes over State Highway Commission.

[fol. 255] IN UNITED STATES DISTRICT COURT

Civil Action No. 351

[Title omitted]

MOTION TO VACATE RESTRAINING ORDER AND DENY APPLICATION FOR TEMPORARY AND/OR INTERLOCUTORY INJUNCTION  
—Filed April 25, 1940

Come now the defendants Leon C. Phillips, individually and as Governor of the State of Oklahoma, Mac Q. Williamson individually and as the Attorney General of said State, Louis A. Ledbetter individually and as Adjutant General, S. H. Singleton, George Meacham, and H. E. Bailey individually and as members of the State Highway Commission, and respectfully move the Court to vacate and set aside the restraining order heretofore issued herein, and deny the application of the plaintiff for a temporary or interlocutory injunction as prayed for in its complaint, for the following reasons, to-wit:

(1) That this action is a suit against the State of Oklahoma and this Court was without jurisdiction to issue said restraining order and is without jurisdiction to grant the temporary or interlocutory injunction sought, pressed and prayed for in the complaint of the plaintiff.

(2) That, under the allegations of the complaint of the plaintiff and the proof, this action is not a Three-Judge one, and this Court as such has no right, power or authority to hear and determine this cause, grant or deny the temporary and/or interlocutory injunction sought and pressed, and prayed for in the complaint of this plaintiff.

(3) That, if this court has jurisdiction over the subject-matter of this action for any purpose, yet nevertheless it has no right, power or authority to restrain the prosecution of the State Court action referred to in said complaint and in said restraining order, and to do so would violate 28 U. S. C. A., Section 379, (Judicial Code, Section 265).

(4) That the complaint of the plaintiff shows upon its [fol. 256] face that this Court is without jurisdiction, right or authority to grant the temporary and/or interlocutory injunction sought and pressed, and prayed for in said complaint.

Mac Q. Williamson, pro se, Attorney General, Randall S. Cobb, First Assistant Attorney General, State Capitol, Oklahoma City, Okla., Fred Hansen, Assistant Attorney General, State Capitol, Oklahoma City, Okla., J. B. Dudley, Dudley, Hyde, Duvall & Dudley, 1501 Ramsey Tower, Oklahoma City, Oklahoma, Ramsey, Martin & Logan, National Bank of Tulsa Bldg., Tulsa, Oklahoma, Attorneys for the defendants. Leon C. Phillips, Governor, Mac Q. Williamson, individually and as Attorney General, Louis A. Ledbetter, Adjutant General, S. H. Singleton, George Meacham and H. E. Bailey, as members of the State Highway Commission, Dudley, Hyde, Duval & Dudley, by J. B. Dudley, Ramsey, Martin and Logan, National Bank of Tulsa Bldg., Tulsa, Oklahoma, by ———, Attorneys for the defendants, Leon C. Phillips, Louis A. Ledbetter, S. H. Singleton, George Meacham and H. E. Bailey, as individuals.

[File endorsement omitted.]



[fol. 257] IN UNITED STATES DISTRICT COURT

Civil Action No. 351

[Title omitted]

ORDER OVERRULING MOTION TO VACATE RESTRAINING ORDER,  
ETC.—Filed, May 9, 1940

On this 25th day of April, 1940, there comes on for hearing motion filed herein April 25, 1940, of the defendants Leon C. Phillips, individually and as Governor of the State of Oklahoma; Mac Q. Williamson, individually and as Attorney General of the State of Oklahoma; Louis A. Ledbetter, individually and as Adjutant General of the National Guard of the State of Oklahoma; and S. H. Singleton, George Meacham, and H. E. Bailey, individually and as Members of the State Highway Commission of the State of Oklahoma, to vacate restraining order and deny application for temporary and/or interlocutory injunction, and the Court having heard and considered said motion and the argument of counsel thereon,

It Is the Order of This Court, unanimously, that said motion be, and the same is hereby, overruled and exceptions allowed.

Made and Ordered Entered this 25th day of April, 1940.

R. L. Williams, United States Circuit Judge, F. E. Kennamer, United States District Judge, Alfred P. Murrah, United States District Judge.

[File endorsement omitted.]

[fol. 258] IN UNITED STATES DISTRICT COURT

Civil Action No. 351

[Title omitted]

DEFENDANTS' REQUESTED FINDINGS OF FACT AND CONCLUSIONS  
OF LAW—Filed April 11, 1940

Come now the defendants Leon C. Phillips, individually and as Governor, Mac Q. Williamson, individually and as Attorney General, Louis A. Ledbetter, individually and as

Adjutant General, and S. H. Singleton, George Meacham, and H. E. Bailey, individually and as members of the State Highway Commission, and request the Court to make the following findings of fact and conclusions of law, and each of such findings and conclusions, in granting or refusing the preliminary injunction pendente lite prayed for by plaintiff herein:

### Findings of Fact

(1) Between about 3:30 and 4:30 P. M. on March 13, 1940, Governor Phillips conferred with Attorney General Williamson and Assistant Attorneys General Randell S. Cobb and Fred Hansen about filing a lawsuit on behalf of the State of Oklahoma in the State courts to restrain inundation of State highways and bridges in the Grand River (Pensacola) Dam basin. The flow of the Grand River was not then impeded, but work on the Dam was nearing the stage where stoppage of the river was contemplated. Governor Phillips instructed Attorney General Williamson to file such a lawsuit.

[fol. 259] (2) After about 4:30 P. M. on March 13, 1940, Governor Phillips issued the following Executive Military Order Declaring Martial Law:

(See "Exhibit A", attached hereto.)

(3) On March 13, 1940, subsequent to his issuance of the Order Declaring Martial Law, Governor Phillips gave Adjutant General Ledbetter oral directions substantially as follows:

"The Adjutant General is directed to place in effect the Executive Order declaring Martial Law at the Grand River Dam, if it is found necessary so to do to protect and prevent damage to the property of the State of Oklahoma, including the roads and bridges, but in no case will he use unnecessary force to interfere with any public operations or the construction of the dam, and will in his discretion cause to be executed the order declaring martial law only to the extent that it may be necessary to protect public property of the State and to prevent its destruction or damage."

(4) Pursuant to directions of Adjutant General Ledbetter, Major Harry B. Parris, Captain Benjamin Bliss,

and Lieutenant Lem W. Shields of the National Guard proceeded to the Grand River Dam-site, arriving between 8:00 and 9:00 P. M. on March 13, 1940.

(5) Upon his arrival at the dam-site between 8:00 and 9:00 P. M. on March 13, 1940, Major Harry B. Parris inspected the dam with I. N. Towne, Construction Superintendent for Massman Construction Company, general contractor for the Grand River Dam Authority (GRDA). Towne advised Major Parris that he had just completed a concrete pour on Arch 6 of the dam, and that no further concrete pours could be made on Arch 6 within 48 to 60 hours. Major Parris instructed Towne not to close the six openings at the bottom of Arches 7 and 8, through which the Grand River was then flowing, and to make no further pours on Arch 6 pending further orders, but permitted him to go ahead with other work which did not obstruct the flow of the river.

(6) Adjutant General Ledbetter and his staff arrived at the dam-site about 8:30 A. M., March 14, 1940, and left late that afternoon.

[fol. 260] (7) At about 9:15 A. M., March 14, 1940, pursuant to directions of Adjutant General Ledbetter, forty National Guard soldiers in nine trucks arrived at the dam-site, stayed there about half an hour without getting out of the trucks or unloading any equipment, and then left the dam-site permanently on order of the Adjutant General.

(8) Acting under the direction of Governor Phillips and the State Highway Commission, Attorney General Williamson caused to be commenced in the District Court of Ottawa County, Oklahoma, on the afternoon of March 14, 1940, Case No. 15174 in said Court, styled "State of Oklahoma, ex rel. Leon C. Phillips, Governor of the State of Oklahoma, and the State Highway Commission of the State of Oklahoma, Plaintiff, vs. Grand River Dam Authority; Ray McNaughton, H. Eichenberger, Earl Ward, R. P. Colley, and M. Duncan, as members of the Board of Directors of the Grand River Dam Authority; T. P. Clonts, General Manager of the Grand River Dam Authority; W. R. Holway, Chief Engineer of the Grand River Dam Authority; and Massman Construction Company, a corporation, Defendants", praying for judgment permanently restraining said defendants from preventing the free flowage of the waters of Grand

River through and past the Grand River Dam, from closing the last section of said dam, and from impounding the waters of Grand River so as to inundate, destroy, and make useless the State highways and bridges within the reservoir area of said dam, unless and until the GRDA should pay to the State of Oklahoma the sum necessary to pay for the relocation and construction of said highways and bridges; praying further that the Court set the petition for hearing to determine whether or not a temporary injunction should be issued, and that at said hearing the Court grant plaintiff a temporary injunction enjoining said defendants from doing any of the acts just mentioned; and praying further that a temporary restraining order be granted against said [fol. 261] defendants forthwith, alleging that otherwise plaintiff would suffer irreparable damage and injury.

(9) The petition filed in Case No. 15174 in the District Court of Ottawa County, Oklahoma, on March 14, 1940, reads as follows.

(See "Exhibit B", attached hereto).

(10) On the afternoon of March 14, 1940, the District Court of Ottawa County, Oklahoma, issued a temporary restraining order in Case No. 15174, restraining the defendants therein from closing and constructing Arch 6 of the Grand River Dam to any point above 700 feet elevation and from closing or shutting the six flood gates at the bottom of the dam until the further order of the Court, setting plaintiff's application for temporary injunction for hearing at 9:00 o'clock A. M. on March 20, 1940, at the District Court Room in Miami, Oklahoma, and ordering that each of said defendants be served forthwith with a copy of said temporary restraining order.

(11) The temporary restraining order issued in Case No. 15174 in the District Court of Ottawa County, Oklahoma, on March 14, 1940, reads as follows:

(See "Exhibit C", attached hereto).

(12) Construction Superintendent I. N. Towne of Massman Construction Company had notice late in the afternoon of March 14, 1940, of the temporary restraining order issued in Case No. 15174 in the District Court of Ottawa County, Oklahoma.



(13) On the morning of March 14, 1940, the elevation of Arch 6 was 666 feet. Pours on that arch proceeded on schedule, three pours of about 11 feet each being made between March 14, 1940, and March 21, 1940. This raised Arch 6 to an elevation of approximately 700 feet on the latter date.

(14) The six openings at the bottom of Arches 7 and 8, mentioned in the temporary restraining order issued in [fol. 262] Case No. 15174 in the District Court of Ottawa County, Oklahoma, were closed on schedule, on the night of March 21, 1940, the construction program then having arrived at a point where all of the arches were at 700 feet elevation or above. On March 14, 1940, Construction Superintendent I. N. Towne of Massman Construction Company had contemplated closing these six openings in about a week or ten days in the ordinary course of the work.

(15) Major Parris, Captain Bliss, and Lieutenant Shiekus remained at the dam-site until March 17, 1940.

(16) Lieutenants W. E. Harrison and Oran N. McCain of the National Guard arrived at the dam-site on March 21, 1940, pursuant to directions of Adjutant General Ledbetter, and remained there in the capacity of military observers, observing the progress of the dam, until the time of this trial (March 25, 1940).

(17) At no time did any officer or member of the National Guard give Massman Construction Company or its Construction Superintendent, I. N. Towne, any orders further than or in addition to the order described above given him by Major Parris on March 13, 1940, which order related to closing the six openings at the bottom of Arches 7 and 8 and making further pours on Arch 6.

(18) Massman Construction Company did not refrain from doing any work in connection with the completion of the dam on account of any order of or on account of the presence of any officers or soldiers of the National Guard.

(19) Massman Construction Company did not refrain from doing any work in connection with the completion of the dam on account of the temporary restraining order issued in Case No. 15174 in the District Court of Ottawa County, Oklahoma.

(20) The State and County highways in controversy will be inundated anywhere from two weeks to six months after the closing of the six openings at the bottom of Arches 7 and 8.

(21) One of the six openings at the bottom of Arches 7 [fol. 263] and 8 is not permanently closed but is equipped with a steel or cast-iron sluice-gate controlled by a motor. Consequently it can be opened or closed at will. If left entirely open, it alone would carry off the present ordinary or ordinary low water flow of Grand River.

(22) There was no conference or agreement between the Chairman of the State Highway Commission and the GRDA or any of its members, or between the Chairman of the Board of Directors of the GRDA and Governor Phillips, the State Highway Commission, or anyone else, with reference to the filing of Case No. 15174 in the District Court of Ottawa County, Oklahoma. The GRDA had no knowledge that this suit was about to be filed,

(23) Attorney General Williamson intended to have Case No. 15174 in the District Court of Ottawa County, Oklahoma, prosecuted in good faith; and the Board of Directors of the GRDA in good faith instructed GRDA's counsel, R. L. Davidson, to defend this suit.

(24) Case No. 15174 in the District Court of Ottawa County, Oklahoma, is not a friendly lawsuit but an adversary proceeding representing a genuine controversy.

(25) Grand River Dam Authority is a conservation and reclamation district constituting a public corporation regularly created and existing by virtue of Article 4 of Chapter 70 of the Session Laws of 1935 of the State of Oklahoma, as amended. During the early Fall of 1937 the United States regularly made an allotment to aid in financing the construction of a dam on the Grand River in the State of Oklahoma, for a loan in the amount of \$11,563,000 and for a grant in the amount of 45% of the cost of the project, but not to exceed \$8,437,000. On October 16, 1937, the United States made a formal written offer to the GRDA pursuant to said allotment and said offer was accepted in writing by [fol. 264] the GRDA on that date. Pursuant to its obligation under said offer, the United States has purchased and is now the owner and holder of \$11,563,000 aggregate prin-

principal amount of the bonds of the GRDA regularly issued pursuant to and secured by that certain indenture of trust dated as of April 1, 1938, being all of the outstanding bonds of the GRDA. Such bonds are secured by a first pledge of and are payable solely from the revenues of the GRDA Flood Control and Hydro-Electric Project after payment of reasonable and proper expenses of maintenance and operation. The United States has also paid \$6,562,500 of the grant.

### Conclusions of Law

This Court concludes as a matter of law:

(1) This action as to the defendants Leon G. Phillips, individually and as Governor, Mac Q. Williamson, individually and as Attorney General, Louis A. Ledbetter, individually and as Adjutant General, and S. H. Singleton, George Meacham, and H. E. Bailey, individually and as members of the State Highway Commission, is in effect a suit against the State of Oklahoma.

(2) This action insofar as it seeks to require any of the defendants herein to dismiss Case No. 15174 in the District Court of Ottawa County, Oklahoma, or to restrain or interfere in any manner with their prosecution of the same, is in effect a suit against the State of Oklahoma.

(3) This Court should not require any of the defendants herein to dismiss Case No. 15174 in the District Court of Ottawa County, Oklahoma, or restrain or interfere in any manner with their prosecution of the same, because of the prohibition of Tit. 28, §379, U. S. C. A.

(4) This Court should not require any of the defendants [fol. 265] herein to dismiss Case No. 15174 in the District Court of Ottawa County, Oklahoma, or restrain or interfere in any manner with their prosecution of the same, because of the principles of comity.

(5) Governor Phillips' declaration of martial law, and Governor Phillips' and Adjutant General Ledbetter's use of the militia of the State of Oklahoma and other acts pursuant thereto, did not contravene the Constitution of the United States or the Fourteenth Amendment thereto.

(6) In Governor Phillips' declaration of martial law, and Governor Phillips' and Adjutant General Ledbetter's use

of the militia of the State of Oklahoma and other acts pursuant thereto, said defendants proceeded as authorized by the Constitution and laws of the State of Oklahoma, particularly Sections 6 and 8, Article 6, of the Constitution and Section 4982, Oklahoma Statutes 1931.

(7) The United States has no lien upon or interest in any of the physical properties of the Grand River Dam Authority.

(8) The United States cannot maintain this action.

(9) This Court has no jurisdiction of this action. (See Tit. 28, §341, U. S. C. A.)

(10) This Court has no jurisdiction to grant the preliminary injunction pendente lite prayed.

(11) The preliminary injunction pendente lite should be denied as a matter of law.

(12) The preliminary injunction pendente lite should be denied as a matter of discretion.

Respectfully Submitted, This 11th day of April, 1940.

Mac Q. Williamson, pro se Attorney General;  
 (Signed) Randell S. Cobb, First Assistant Attorney General, Address: State Capitol, Oklahoma [fol. 266] City, Oklahoma; (Signed) Fred Hansen, Assistant Attorney General; Dudley, Hyde, Duvall & Dudley, Attorneys at Law, Oklahoma City, Oklahoma; Ramsey, Martin & Logan, Attorneys at Law, Tulsa, Oklahoma, Attorneys for the defendants Leon C. Phillips, Governor; Mac Q. Williamson, individually and as Attorney General; Louis A. Ledbetter, Adjutant General; S. H. Singleton, George Meacham and H. E. Bailey, as members of the State Highway Commission. Dudley, Hyde, Duvall & Dudley, Attorneys at Law, Oklahoma City, Oklahoma; by (Signed) J. B. Dudley, Address: Ramsey Tower, Oklahoma City, Oklahoma; Ramsey, Martin & Logan, Attorneys at Law, Tulsa, Oklahoma; by (Signed) Villard Martin, Garrett Logan & Tom Finney, Address: National Bank of Tulsa Building, Tulsa, Oklahoma, Attorneys for the defendants, Leon C. Phillips, Louis A. Ledbetter, S. H. Singleton, George Meacham, and H. E. Bailey, as individuals.



[fol. 267] Service of the foregoing Requested Findings of Fact and Conclusions of Law, and receipt of a copy thereof, is hereby acknowledged this 11th day of April, 1940.

For the Plaintiff, The United States of America,  
(Signed) Whit Y. Mauzy, United States District  
Attorney.

[File endorsement omitted.]

[fol. 268]

EXHIBIT "A"

Louis A. Ledbetter, Brigadier General,  
The Adjutant General  
State of Oklahoma.

Executive Military Order Declaring Martial Law

Whereas, a corporation known as the Grand River Dam Authority, through its officers, agents, employees, and servants is constructing a dam across the Grand River in the vicinity hereinafter more specifically described, which will cause said river to back up and flood certain highways and bridges, the public property of the State of Oklahoma, to the irreparable injury of the State and in utter disregard of the rights of said State and its citizens, and said Grand River Dam Authority has refused to compensate or offer to compensate the State, or any municipal subdivision thereof, or to secure the State against loss and damages thus to be caused, and that by reason thereof, such an emergency exists that in order to prevent the damages so threatened and intended:

Now, Therefore, I, Leon C. Phillips, The Governor of the State of Oklahoma, by authority in me vested by Sections 2 and 8 of Article 6 of the Constitution of the State of Oklahoma, and by other provisions of the Constitution, do hereby and hereon declare martial law on the area occupied by said Grand River Dam, more specifically described as the Southwest Quarter of Section 14, Township 23 North, Range 21 East, in Mayes County, Oklahoma; and Brigadier General Louis A. Ledbetter, The Adjutant General, is hereby authorized and directed to occupy the said zone with the military forces of the State, and to maintain the same with a unit or units of the National Guard, and to maintain

such military control against all interference whatsoever, except on order otherwise by the superior executive power of the President of the United States; that he, the said [fol. 269] Adjutant General, will stop all work on said Grand River Dam in said zone and will permit no one to enter or pass through said zone, except only the authorized representatives of the Governor, and the agents and military forces under his command as Adjutant General of the State of Oklahoma; that the military law hereinbefore declared and promulgated in said zone shall not extend into any other portion or section of the State except that hereinbefore named; that he, the said Adjutant General, shall summon sufficient forces, upon receipt of this order, to take possession of, and define the boundaries of said zone under martial law, and exercise his military control as herein designated.

Done, at the State Capitol, in the City of Oklahoma City, Oklahoma, on this, the 13th day of March, A. D. 1940.

By the Governor of the State of Oklahoma:

(Sgd.) Leon C. Phillips, Commander-in-Chief.

Attest: (Sgd.) C. C. Childers, Secretary of State: (Seal.)

[fol. 270]

EXHIBIT "B"

In the District Court of Ottawa County, State of Oklahoma

No. 15174 -

STATE OF OKLAHOMA, ex rel. LEON C. PHILLIPS, Governor of the State of Oklahoma, and the State Highway Commission of the State of Oklahoma, Plaintiff,

vs.

GRAND RIVER DAM AUTHORITY; RAY McNAUGHTON, H. EICHENBERGER, Earl Ward, R. P. Colley, and M. Duncan, as Members of the Board of Directors of the Grand River Dam Authority; T. P. Clonts, General Manager of the Grand River Dam Authority; W. R. Holway, Chief Engineer of the Grand River Dam Authority; and Massman Construction Company, a corporation, Defendants

Petition

Comes now the plaintiff, the State of Oklahoma on the relation of Leon C. Phillips, Governor of said State, and the

State Highway Commission of the State of Oklahoma, and for cause of action against the defendant, and each of them, alleges and states:

1. That the relator, Leon C. Phillips, is the duly elected, qualified and acting Governor of the State of Oklahoma, and as such Governor it is his duty, under the provisions of Section 8, Article 6, of the Constitution of Oklahoma, to cause the laws of said State to be faithfully executed, and the relator, State Highway Commission, is composed of S. H. Singleton, Chairman, George Meacham and H. E. Bailey, members.

2. That the defendant, Grant River Dam Authority, is a corporate governmental agency of the State of Oklahoma; [fol. 271] that the defendants, Ray McNaughton, H. Eichlenberger, Earl Ward, R. P. Colley, and M. Duncan, are members of and compose the Board of Directors of the Grand River Dam Authority; that the defendant T. P. Clonts is General Manager of the Grand River Dam Authority; that the defendant, W. R. Holway, is Chief Engineer of the Grand River Dam Authority; that the defendant, Massman Construction Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, and doing business in the State of Oklahoma under the laws of said State, with its principal place of business at —, in said State.

3. That pursuant to the provisions of Article 4, Chapter 70, Oklahoma Session Laws 1935, as amended by Articles 1 and 2, Chapter 70, Oklahoma Session Laws 1937, and Articles 2 and 3, Chapter 70, Oklahoma Session Laws 1939, the Grand River Dam Authority, through its above named Board of Directors, has let a contract for the construction of a dam across Grand River in Mayes County, Oklahoma, to the defendant, Massman Construction Company, which company under the direction and supervision of the defendants, T. P. Clonts, General Manager of the Grand River Dam Authority, and W. H. Holway, Chief Engineer of the Grand River Dam Authority, is now constructing a dam across Grand River in Mayes County pursuant to the terms of said contract; that said dam is nearing completion and, unless the defendants above named are enjoined and restrained by this court as prayed for herein, will be completed within the next few days, and when completed will

impound the waters of Grand River and cause the same to overflow and inundate lands and property of the State of Oklahoma, to-wit: highways and bridges of said State in Mayes, Delaware and Ottawa Counties, and thereby take, damage and destroy the same and prevent the future use thereof.

4. That the Grand River Dam Authority has not acquired [fol. 272] said State highways by condemnation or otherwise and has not relocated or required the relocation of the same, and, although due demand has been made for compensation for the taking, damaging and destruction of said highways, said authority has not paid, provided or tendered compensation therefor.

5. That said highways are an integral part of the State highway system of Oklahoma, and when same are inundated, taken, damaged and destroyed, as aforesaid, it will be necessary to relocate said highways by constructing other highways of a similar character in order to serve the traveling public and to complete the State Highway system upon as serviceable and efficient basis as existed prior to the inundation, taking, damaging and destruction of said highways; that the damage that will be suffered by the State of Oklahoma by reason of the inundation, taking, damaging and destruction of said highways is the cost of locating and constructing the other highways above mentioned, which cost will be at least \$889,275.00; that although due demand has been made for said damages, said authority has not paid, provided or tendered the same or any part thereof.

6. That the State of Oklahoma is entitled to be paid the damages which will be sustained by it, as aforesaid, before the Grand River Dam Authority inundates, in whole or in part, its said highways and bridges; that said Authority does not have available and will not hereafter have available funds sufficient to pay the damages that will be suffered by the State of Oklahoma as set forth in the last preceding paragraph of this petition; that by reason thereof the State of Oklahoma would be unable to collect the damages which will be sustained by it if its highways and bridges are inundated and would suffer irreparable injury to the extent above set forth by reason of the impossibility of actually collecting said damages; that the plaintiff is, therefore, [fol. 273] without an adequate remedy at law.



7. That the defendants herein are about to and will, unless restrained and enjoined as prayed for herein, inundate, take, damage and destroy the highways and bridges of this State, as aforesaid, without compensating the State therefor in utter disregard of the sovereign and proprietary rights of the State of Oklahoma and its citizens and to the great and irreparable injury of both intra and interstate traffic; that said highways will be closed and many communities will be left without access to the outside world; that although the law clearly requires the defendants to relocate said roads they have negligently and wholly failed to do so or to make due and proper provision therefor.

Wherefore, Plaintiff prays the Court for a judgment against the defendants, Grand River Dam Authority; Ray McNaughton, H. Eichenberger, Earl Ward, R. P. Colley and M. Duncan as the members composing the Board of Directors of the Grand River Dam Authority; T. P. Clonts, General Manager of the Grand River Dam Authority; W. R. Holway, Chief Engineer of the Grand River Dam Authority; and the Massman Construction Company, a corporation; and each of them, their agents, servants, employees or anyone acting on their behalf, permanently restraining and enjoining all and each of them, from preventing the free flowage of the waters of Grand River through and past the dam being constructed by them on said river, and from closing the last section of said dam, and from impounding the waters of said Grand River so as to inundate, destroy and make useless the State highways and bridges within the reservoir area of said dam, unless and until the Grand River Dam Authority pays to the State of Oklahoma the sum necessary to pay for the relocation and construction of said highways and bridges, and for such other and further relief as to the Court seems proper, and for costs.

[fol. 274] Plaintiff further prays that the Court set this petition for hearing to determine whether or not a temporary injunction shall be issued and that at said hearing the Court grant the plaintiff temporary injunction enjoining the said defendants, and each of them, their agents, servants or employees, or anyone acting on their behalf, from doing any of the acts described in the first paragraph of this prayer.

Plaintiff further alleges that unless the said defendants, their agents, servants and employees, are forthwith and without notice enjoined and restrained from doing any of

the acts described in the first paragraph of this prayer, the said plaintiff will suffer irreparable damage and injury; wherefore, plaintiff prays that a temporary restraining order against the defendants be granted forthwith.

Mac Q. Williamson, Attorney General; Randell S. Cobb, First Assistant Attorney General; Fred Hansen, Assistant Attorney General, Attorneys for Plaintiff.

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STATE OF OKLAHOMA,  
Oklahoma County, ss:

Leon C. Phillips, being first duly sworn on oath states:

That this action is brought upon his relation as Governor of the State of Oklahoma; that he has read the foregoing petition and is familiar with the contents thereof, and that the matters and things stated therein are true.

Leon C. Phillips.

Subscribed and sworn to before me this 14th day of March, 1940. Marie Anderson, Notary Public. My commission expires 6/14/43. (Seal.)

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[fol. 275] STATE OF OKLAHOMA,  
County of Oklahoma, ss:

S. H. Singleton, being first duly sworn on oath states: That this action is brought upon the relation of the State Highway Commission of the State of Oklahoma of which he is a member and Chairman; that he has read the foregoing petition and is familiar with the contents thereof, and that the matters and things stated therein are true.

S. H. Singleton.

Subscribed and sworn to before me this 14th day of March, 1940. Marie Anderson, Notary Public. My Commission expires 6/14/43. (Seal.)

[fol. 276]

EXHIBIT "C"

IN THE DISTRICT COURT OF OTTAWA COUNTY, STATE OF  
OKLAHOMA

No. 15174

STATE OF OKLAHOMA, ex rel. LEON C. PHILLIPS, Governor of  
the State of Oklahoma and the State Highway Commis-  
sion of the State of Oklahoma, Plaintiff,

vs.

GRAND RIVER DAM AUTHORITY; RAY McNAUGHTON, H.  
EICHENBERGER, Earl Ward, R. P. Colley, and M. Duncan,  
as Members of the Board of Directors of the Grand River  
Dam Authority; T. P. Clonts, General Manager of the  
Grand River Dam Authority; W. R. Holway, Chief Engi-  
neer of the Grand River Dam Authority; and Massman  
Construction Company, a Corporation, Defendants

## RESTRAINING ORDER

The State of Oklahoma to Grand River Dam Authority; Ray  
McNaughton, H. Eichenberger, Earl Ward, R. P. Colley,  
and M. Duncan, as Members of the Board of Directors of  
the Grand River Dam Authority; T. P. Clonts, General  
Manager of the Grand River Dam Authority; W. R. Hol-  
way, Chief Engineer of the Grand River Dam Authority;  
and Massman Construction Company, a Corporation

This matter coming on for hearing before the Honorable  
Wm. M. Thomas, Judge of the District Court, upon the  
verified petition of the plaintiff filed herein, and it appear-  
ing to the Court that the plaintiff upon the facts alleged in  
said petition is entitled to the relief prayed for; and it fur-  
ther appearing that the said plaintiff will suffer irreparable  
damage and injury unless the said defendants and each of  
them and their agents, servants and employees or any one  
acting on their behalf, are restrained forthwith and with-  
out notice.

It is hereby ordered and adjudged that the said defend-  
[fol. 277] ants, Grand River Dam Authority; Ray Mc-  
Naughton, H. Eichenberger, Earl Ward, R. P. Colley and  
M. Duncan as the members composing the Board of Di-  
rectors of the Grand River Dam Authority; T. P. Clonts,

General Manager of the Grand River Dam Authority; W. R. Holway, Chief Engineer of the Grand River Dam Authority; and Massman Construction Company, a corporation, their agents, servants and employees or any one acting on their behalf be and the same are hereby enjoined and restrained from closing and constructing Arch number six (6) of the dam being constructed by the defendants across Grand River in Mayes County, Oklahoma to any point above seven hundred (700) foot elevation, said arch number six (6) being the last section or arch of said dam to be closed, and from closing or shutting the six (6) flood gates at the bottom of said dam until the further order of this court.

It is further ordered that the application of plaintiff for a temporary injunction against defendants is hereby set for hearing at 9 o'clock A. M. on the 20th day of March, 1940, at the District Court room in the City of Miami, County of Ottawa, Oklahoma.

It is further ordered that each of the defendants be served with a copy of this order forthwith.

Dated this 14th day of March, 1940.

Wm. M. Thomas, District Judge.

[fol. 278] IN UNITED STATES DISTRICT COURT

Civil Action No. 351

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW BY THE THREE-JUDGE COURT—Filed April 25, 1940

### Findings of Fact

1. The defendant Leon C. Phillips is the duly qualified and acting Governor of the State of Oklahoma, and Commander-in-Chief of its National Guard and Militia.

2. The defendant Mac Q. Williamson, is the duly qualified and acting Attorney General of the State of Oklahoma.

3. The defendant Louis A. Ledbetter, is the duly qualified and acting Adjutant General of the National Guard of the State of Oklahoma.



4. The defendants S. H. Singleton, George Meacham, and H. E. Bailey, are the duly qualified and acting members of the State Highway Commission, an Agency of the State of Oklahoma, created and functioning by virtue of Article 2, of Chapter 50; of the Session Laws of 1939, of the State of Oklahoma.

5. The plaintiff has dismissed the complaint as against the defendant, State Highway Commission, but not against the members of the Commission as individual defendants.

6. The defendant Grand River Dam Authority is a conservation and reclamation district constituting a governmental agency of the State of Oklahoma and a body corporate and politic created and existing by virtue of Article 4 of Chapter 70 of the Session Laws of 1935 of the State of [fol. 279] Oklahoma, as amended, and having its domicile and principal place of business at Vinita, Oklahoma.

7. The defendants, Ray McNaughton, H. Eichenberger, Earl Ward, R. P. Colley, and M. Duncan, are the members of the Board of Directors of the Grand River Dam Authority. The defendant, T. P. Clonts is the General Manager of the Grand River Dam Authority and the defendant W. R. Holway is the Chief Engineer of said Authority.

8. The defendant Massman Construction Company, Inc., a corporation, duly organized and existing under the laws of the State of Missouri, is the general contractor with said Authority for the construction of the dam hereinafter referred to, and is doing business in the State of Oklahoma.

9. The defendant First National Bank of Miami, is a national banking association duly organized and existing under the laws of the United States, having its principal place of business at Miami, Oklahoma, and is trustee under a certain indenture of trust, dated as of April 1, 1938, entered into by and between said bank and said Authority and pursuant to which there have been issued and by which there have been secured the bonds of said Authority hereinafter referred to and now held by the United States. Said indenture of trust, Govt. Exhibit 5, is incorporated in these findings by reference.

10. During the early fall of 1937, the United States, by its Federal Emergency Administrator of Public Works, acting with the approval of the President, and pursuant to the pro-

visions of Title II of the Act of Congress of June 16, 1933, and all Acts amendatory thereof and supplementary thereto, made an allotment to the defendant Grand River Dam Authority to aid in financing the construction of a dam on the Grand River in the State of Oklahoma, together with hydro-electric generating plant and transmission lines, including [fol. 280] necessary equipment and the acquisition of the necessary land and rights of way therefor.

11. The purpose of said dam was to provide water storage for flood control and hydro-electric power development. Said allotment was for a loan in an amount of \$11,563,000 and for a grant in the amount of forty-five per cent to the cost of the project, but not to exceed \$8,437,000.

12. On October 16, 1937, the United States by its Federal Emergency Administrator of Public Works, made a formal written offer to the defendant Grand River Dam Authority pursuant to said allotment and said offer was accepted in writing by the Authority on that date.

13. The acceptance of said offer (as modified by subsequent waivers) contained a covenant obligating the Authority to complete the project, including the dam to a height of 755 feet, not later than March 30, 1940. Said offer, as modified by all subsequent waivers, Govt. Exhibit 2, and said acceptance, Govt. Exhibit 3, are incorporated in these findings by reference.

14. Pursuant to its obligation under said offer and acceptance, the United States has purchased and is now the owner and holder of \$11,563,000 aggregate principal amount of the bonds of the defendant Grand River Dam Authority issued pursuant to and secured by said indenture dated as of April 1, 1938, being all such bonds outstanding.

15. The United States is now the holder of all outstanding bonds and coupons issued by the defendant Grand River Dam Authority pursuant to and secured by said indenture.

16. All of said bonds were approved, Government Exhibit 4, incorporated herein by reference, as to legality and validity by the defendant Williamson as Attorney-General of the State of Oklahoma and ex-officio Bond Commissioner of the State of Oklahoma.

[fol. 281] 17. Such bonds are secured by a first and prior, effecting pledge of, being payable solely from the revenues

of the Authority, and as a prior and preferred lien thereon from whatever source derived, including all revenues received from the flood control and hydro-electric project after payment of reasonable and proper expenses of maintenance and operation. The sole and prior and exclusive security for said bonds is the revenue to be derived as aforesaid from said Project, and in the event of a default under the indenture securing said bonds the United States may cause to be appointed a receiver to take possession of and operate said project for the benefit of holders of such bonds all as in said indenture provided.

18. The United States has also paid over \$6,532,500 of the grant. The remainder of the grant is normally payable upon completion of the project.

19. Since the date of said allotment, neither the State of Oklahoma nor any of its agencies, instrumentalities or subdivisions has contributed any funds whatever towards the cost of said project. Prior to the date of the allotment, the Oklahoma Planning and Resources Board paid about \$5,000 for preliminary expenses.

20. The defendant Grand River Dam Authority commenced construction of the said flood control and hydro-electric project on or about February 7, 1938, and has now virtually completed the construction of the main dam. As of February 20, 1940, the total amount actually disbursed by said Authority for all purposes in connection with such construction was approximately \$14,984,000, and was paid for solely out of funds furnished by the United States by way of the loan and grant above referred to.

21. Prior to construction of said dam, the defendant Grand River Dam Authority secured a license from the Federal Power Commission, an independent agency of the [fol. 282] United States, to build said dam on the bed of the Grand River, a tributary of a navigable river of the United States, and to impound the waters of said Grand River for the purposes of the project. Said license, Govt. Exhibit 6, is incorporated in these findings by reference.

22. In order for the defendant Grand River Dam Authority to perform its contractual obligations under the indenture and the loan and grant agreement aforesaid, it must complete said dam and commence the flooding of the reser-

voir area immediately, before the expected onset of the spring floods in April, 1940.

23. The Grand River Dam is a multiple arch dam, almost a mile long, with a gravity portion to be used as a spillway at its eastern end.

24. The major portion of the dam consists of buttresses supporting concrete arches. These arches have a span of 64 feet, with a thickness ranging from 5 feet at the bottom to less than 3 feet at the top. The arches are virtually concrete shells, which carry the weight of the water on to the buttresses, in the same manner as the arches of a bridge carry the load on to the piers of the bridge. The spillway section of the dam is a gravity dam, which stays in place and retains the weight of water behind it with its own weight.

25. The Grand River Dam was not designed to have excess water flow over the top of the arches; all such water was to flow over the gravity spillway.

26. Previous hydrographic experience on the Grand River, Government Exhibit 15, incorporated herein by reference, shows that the floods come in April, May, and June, and that thereafter there is no substantial amount of high water until the same months of the following year.

27. On or about February 10, 1940, the defendant Massman Construction Co. submitted, and the defendant Grand [fol. 283] River Dam Authority approved, a closing schedule. This schedule provided plans for closing the six temporary openings, eight by ten feet, which had been left at arches 7 and 8 to carry off the flow of the Grand River during construction.

28. The closing was to be done, if possible, at low water, in January, February, or March of the year, but the exact time of closing was dependent upon the progress of construction on the arches. The schedule provided that the closing should take place when the arches reached elevation 700. It was estimated that at that elevation further construction on the arches could be completed in sufficient time to carry the arches to the top of the dam, viz., elevation 755, before any expected flood could overtop the arches.

29. The closing schedule contemplated that five of the openings would be fully plugged when the arches reached



elevation 700, and that the remaining opening would be closed by a steel sluice gate, motor-operated; to permit water to flow down stream for the benefit of the water users below the dam.

30. On or about March 22, 1940, when arch 6 reached elevation 700, Government Exhibit 16, incorporated herein by reference, the five temporary openings were closed with concrete, and the sixth was closed by means of a steel sluice gate.

31. When the lake behind the dam reaches elevation 678, the sluice gate opening will be permanently plugged with concrete. Thereafter water for the down stream users will be supplied through the permanent outlet at elevation 675, and through the turbines.

32. If the six openings in the dam had not been closed at the time they were, and high water had come down the river, a large volume of muddy water would have gone through those openings at very high velocity, which would have [fol. 284] scoured out the rock adjacent to the buttress walls. If this volume of water had continued to flow for any length of time, there would have been a strong possibility of serious undermining of the foundations, and a probability that the buttresses themselves might topple over and fall, carrying the arches with them.

33. If the dam were not completed, and high water were to come with the openings closed and some of the arches at elevation 700 and no higher, this being the condition of the dam at the time of the hearing on the application for temporary injunction, the following is the damage to be anticipated: The water would fall from elevation 700 down to the rock foundation at elevation 615, and would cause serious damage to the foundations, tearing the rock out between the adjacent buttresses. The rock had been paved with a thin layer of concrete and had not been designed to carry water that fell over the arches. The rock thus broken up would undermine the buttresses, and, in all probability, the buttresses themselves. The buttresses would also be undermined by the water pouring down right next to the buttress. The estimated result would be that a large section of the dam would be likely to go out.

34. Under anticipated high water conditions, based on the hydrographic experience on the river, it would not be pos-

sible to take preventive measures in sufficient time to prevent the estimated damage which would be caused by the floods in the event that the openings had not been closed or in the event that the dam were not completed.

35. The estimated damage which would be caused by a failure to complete the dam; in addition to the physical damage to the structure, would be as follows: The United States would hold a portfolio of greatly depreciated, if not worthless, bonds. The defendant Authority would be left [fol. 285] with only a ruin after large expenditures. The defendant Massman Construction Co. would suffer a severe financial loss in all probability be unable to bid on other projects because of exhausting its bonding capacity. Over a thousand men would be thrown out of work. Incalculable flood damage and loss of life would occur down stream.

36. A failure to close the dam at this time would result in the loss of a year's power revenues, estimated at \$1,000,000. If the power pool were permitted to be formed, but kept at elevation 730, the level of the spillway, the annual loss of revenues would be \$600,000.

37. The testimony of the Government's engineering witnesses was not contradicted in any way, and the defendants produced no witnesses on any of the engineering issues.

38. Unless said dam can promptly be completed and the reservoir area flooded, it will be impossible to impound sufficient waters for the power operations of the Authority for the coming year, with the result that there will be no revenues available for the payment of principal of, or interest on said bonds.

39. While the dam was under construction a controversy arose between the defendant Grand River Dam Authority on the one hand, and the defendants Phillips, Singleton, Meacham, and Bailey on the other, as to the obligation of the defendant Grand River Dam Authority to reimburse the State Highway Commission for the State roads to be flooded as a result of the construction of the project.

40. The defendant Grand River Dam Authority claims that during or about the month of March, 1938, it agreed with the State Highway Commission that if the said Authority would construct a highway bridge located in Dela-

ware County, Oklahoma, in Township 25 North, Range 23 East, approximately three and one-half miles northwest of the town of Grove, the State Highway Commission would [fol. 286] accept this in full payment of the said Authority's obligation to pay for flooded roads. Thereafter said bridge was built and completed pursuant to said agreement by said Authority at a cost of \$369,083.

41. Thereafter, the defendant Phillips maintained that there was no such agreement or that, if any agreement had been consummated, it was invalid.

42.<sup>o</sup> The defendant Phillips thereafter, threatened to prevent completion of said dam and the flooding of the reservoir area unless said Authority, or the United States of America would make provision for compensating the State Highway Commission for flooded roads above and beyond the provisions for the source and time of payment of such compensation set out in the Oklahoma Statute creating the Authority.

43. The said threats of the defendant Phillips were part of a plan on his part to exact for the State of Oklahoma from the United States, money in payment of flooded roads over and above the statutory provisions, which payment the United States would be induced to make in order to prevent the frustration of the purpose of the grant from the United States, and the impairment or destruction of the security for the bonds owned by the United States.

44. Failing to obtain such further provisions for compensation on account of flooded roads, from the defendant Grand River Dam Authority, or from the United States and in furtherance of such plan, the defendant Phillips on March 13, 1940, declared martial law in an area surrounding the dam-site but in said area only, and ordered defendant Ledbetter to occupy said area with the military forces of the State and to maintain the same against all interference with units of the National Guard, and to stop all work on the Grand River Dam. The defendant Phillips' Executive Military Order declaring martial law, Govt. Exhibit 1, is incorporated in these findings by reference.

[fol. 287] 45. More than twelve hours prior to the promulgation of said Executive Military Order declaring martial law, the defendant Ledbetter anticipated said order,

and alerted (Government Exhibit 12-b, incorporated herein by reference), Major H. B. Parris and Company M, 180th Infantry, Oklahoma National Guard.

46. Major Parris and two other officers, in uniform, arrived at the dam-site on the evening of March 13, after the declaration of martial law, and ordered Towne, Massman Construction Co.'s superintendent, not to divert the flow of the river further or to close the openings or to make any further pours on Arch 6, until further orders. No further orders were given by them.

47. In the morning of March 14, the personnel of said Company M, 180th Infantry, Oklahoma National Guard, in uniform, arrived at the Dam-site in trucks. Company M is a machine-gun company, and was fully armed with rifles, machine guns and pistols, all of which had been supplied to it by the United States. The men did not get out of their trucks, and were sent back to their armory about an hour later.

48. In the morning of March 14, the defendant Ledbetter and some of his staff also arrived. All were in uniform. After Company M returned home, Major Parris and two other officers remained at the dam-site in uniform, as military observers, until March 21. On that day they were relieved.

49. Their places were taken by two other officers of the Oklahoma National Guard, who were at the dam-site, in uniform, as military observers, until the hearing in this cause on the application for temporary injunction, there appearing in uniform as witnesses. They had not been relieved at the time of this hearing from their said station as observers. Government Exhibit 11-d; incorporated herein by reference.

[fol. 288] 50. The presence of the armed military personnel above referred to constituted a use of armed violence and military force, and prevented the said Authority, the Massman Construction Co., and their officers and agents, from closing said dam until after the restraining order issued by the Federal Court relieved the situation.

51. The orders issued by the military personnel above referred to hindered the work of the defendant Massman Construction Co., and by the time of the hearing on the appli-



cation for a temporary injunction in this cause, would (but for the restraining order heretofore issued herein) have seriously interfered with the work of completing the dam.

52. At no time before or after said proclamation of martial law or during the pendency of martial law as this declared by defendant Phillips was there any insurrection, rioting, tumult or violence made to or displayed in any way against civil authority or any failure in the functioning of civil authority, in and about the said dam-site and reservoir area, or in the counties in which the dam is located.

53. At no time before or after said proclamation of martial law, or during the pendency of martial law as thus declared by the defendant Phillips, were the processes of law interfered with, or lawless acts committed other than the actions of the defendants Phillips and Ledbetter and their military subordinates, which interfered with the completion of said dam by the defendant Grand River Dam Authority.

54. At no time before or after said proclamation of martial law, or during the pendency of martial law as thus declared by the defendant Phillips, were the local law enforcement authorities having jurisdiction in the vicinity of the dam-site and project area, unable to perform their duties, nor were the civil courts closed or their processes interfered with in any way.

[fol. 289] 55. The defendant Phillips has not revoked his declaration of martial law, nor has he publicly modified it in any way.

56. The defendants Phillips and Ledbetter have at no time disclaimed either their right or their intention to re-order the troops back to the dam-site, and their maintenance of military personnel at the dam-site constitutes a threat to order additional military forces to the dam-site and reservoir area.

57. On March 14, 1940, the defendants Phillips, Williamson, Singleton, Meacham, and Bailey, in further pursuance of the plan above referred to, caused to be filed in the District Court of Ottawa County, Oklahoma, a suit numbered 15174, and entitled "State of Oklahoma ex rel. Leon C. Phillips, Governor, and State Highway Commission v. Grand River Dam Authority, Ray McNaughton, H. Eichenberger, Earl Ward, R. P. Colley, and M. Duncan as mem-

bers of the Board of Directors of the Grand River Dam Authority; T. P. Clonts, General Manager of the Grand River Dam Authority; W. R. Holway, Chief Engineer of the Grand River Dam Authority; and Massman Construction Company, Inc., a corporation". Said suit sought, *inter alia*, an injunction against the completion of the dam and against its closing, but sought no damages, either as original or as alternative relief. The petition in said suit, Govt. Exhibit 13, is incorporated in these findings by reference.

58. A temporary restraining order was issued *ex parte* in said suit returnable Wednesday, March 20, 1940, at 9 A. M. Said restraining order, Govt. Exhibit —, is incorporated in these findings by reference. Neither the United States nor any agency, or officer thereof, was made or attempted to be made a party to said suit, nor could the United States have been sued or made a party thereto in said State court.

[fol. 290] 59. Said restraining order expired of its own terms on March 20, 1940, subsequent to the entry of the temporary restraining order and order to show cause in the present case. No further proceedings have been taken in said State suit since the date of the temporary restraining order and order to show cause entered herein, save that the United States by Whit Y. Mauzy, its attorney for the Northern District of Oklahoma, filed therein on Wednesday morning, March 20, 1940, a suggestion of lack of jurisdiction by reason of the absence of the United States, an indispensable party, and for other reasons therein set forth including the reason that said suit was in effect against the United States and its property. Said suggestion, Govt. Exhibit 13a, is incorporated in these findings by reference.

60. The directors of the defendant Grand River Dam Authority, under date of March 14, called upon the defendant Massman Construction Co. to comply with its contract, and to take all necessary steps to that end. Thereafter, the directors of the defendant Grand River Dam Authority instructed its counsel not to remove the said Ottawa County suit to the Federal Court.

61. None of the defendants Phillips, Williamson, Singleton, Meacham, and Bailey, took any steps to enjoin, restrain, or otherwise prevent the defendant Grand River Dam Authority from receiving an allotment from the United States

as aforesaid, accepting the offer from the United States, as aforesaid, from issuing its bonds, or from constructing said dam. On the contrary, all these defendants acquiesced in all such actions until March 13, 1940, when the defendant Phillips declared martial law. Government Exhibits 4, 18, 19 and 21, all incorporated herein by reference.

62. Since at least November, 1939, all of the defendants Phillips, Williamson, Singleton, Meacham, and Bailey, have had knowledge of the intention of the Grand River Dam Authority to inundate the State roads within the reservoir area without further prepayment of damages therefor, Government Exhibits 4, 18, 19 and 21 incorporated herein by reference.

63. None of the defendants hereto, either severally or in the aggregate, are financially able to respond in damages to the United States to the extent of \$11,563,000.

64. The acts of the defendants hereto, threaten the property interests of the United States.

65. The marketability of the bonds and coupons issued by the defendant Authority which are now held by the United States will be seriously impaired if there should be any damage to the dam, or any delay in the closing of the dam or in the formation of the power pool, or further interference with the project.

66. There was no necessity at the dam-site or the reservoir area for or justifying the use of military force.

67. There was no emergency at the dam-site, or the reservoir area, authorizing or justifying the use of military force.

68. Prior to the incurring of any indebtedness, liability, or obligation of the Authority to the State of Oklahoma, or any sub-division thereof, for any injury occasioned, or expenses incurred, by reason of the overflowing and inundation of any public roads or highways or public property or the requiring of the relocation of roads and highways, the Authority by appropriate resolutions and by the terms of said indenture conferred a prior lien in favor of the United States on all of the revenues received by the Authority in respect of its properties as security for the payment of said bonds owned by the United States.

[fol. 292] 69. The restraining order granted in the District Court of Ottawa County and the injunction prayed for therein, if allowed, would in fact result in forestalling and preventing the completion of the project and the closing of the dam. They would further in fact forestall and prevent the construction of the dam to a height in excess of 700 feet. If the restraining order had been carried out or an injunction as prayed had been granted and carried out, the consequence in fact would be that the source of payment of the obligations due the United States and the security for the bonds of the United States would be seriously impaired or destroyed. The rights and property interests of the United States under (a) the Acts of the Legislature of the State of Oklahoma, (b) the bonds, (c), the trust indenture, (d) the loan agreement, (e) the license from the Federal Power Commission, would in fact be impaired or destroyed by any relief that could be granted on the petition in the District Court of Ottawa County, and particularly by the relief prayed, and by the restraining order already granted.

70. There is imminent and immediate danger of damage to and destruction of the property interests of the United States in the project and in the bonds.

71. The defendants have been and are endangering these property interests.

72. The United States' property interests require protection of injunction to restrain the threatened illegal acts of the defendants.

Findings requested by defendants except as herein covered are denied.

[fol. 293]

#### Conclusions of Law

1. The defendant Grand River Dam Authority is obligated to continue the construction of the Dam with all practicable dispatch and failure to do so constitute a default. (Govt. Exhibit 5, Indenture, Sec. 4.08, and Sec. 10.01(f), and Exhibit 2, Sec. 2(e), incorporated herein by reference.)

2. The United States as the holder of all the bonds and coupons outstanding is empowered by the law of Oklahoma, in the event of default, to protect its rights, and "by action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such



bonds." (Okla. Sess. Laws of 1935, Ch. 70, Art. 4, Sec. 10, as amended by Okla. Sess. Laws of 1939, Ch. 70, Art. 2, Sec. 1 and Sec. 9 of 1935 Act as amended).

3. The United States as holder of all the bonds and coupons issued by the Grand River Dam Authority has a first and prior lien upon the revenues of the Grand River Dam project, subject only to reasonable and appropriate expenses of the maintenance and operation of said project.

4. The United States as holder of all the bonds and coupons issued by the Grand River Dam Authority has a property interest in the dam and project, and is entitled to protect that interest from damage by the unlawful acts of the defendants.

5. The United States is entitled to protect its property interest against interference by defendants who are financially unable to respond in damages to the full extent of the possible injury to the interest of the United States. (Marshall v. Homier, 13 Okla. 264, 269, 74 Pac. 368; Pomeroy, Equity Jurisprudence (4th ed. 1919) Sec. 1911.)

[fol. 294] 6. The United States has a right to the specific performance of the covenants contained in the license of the Federal Power Commission, in the loan and grant agreement, and in the indenture, requiring construction of the dam to an elevation of 755 feet. (United States v. Union Pacific Ry. Co., 160 U. S. 1.)

7. This right to specific performance is a property interest, which the United States is entitled to protect against interference by third persons.

8. The sending of uniformed troops to the dam site under color of the Governor's proclamation of martial law constitutes the use of military force.

9. The Governor of Oklahoma was not justified or authorized in employing military force to stop construction of the dam.

10. Property interests will be protected by injunction against improper taking thereof by military force under color of a declaration of martial law. (Sterling v. Constantin, 287 U. S. 393-94; Russell Pet. Corp. v. Walker, 162 Okla. 216, 19 Pac. (2d) 582; Allen v. Okla. City, 175 Okla. 421, 52 Pac. (2d) 1054; Fluke v. Canton, 31 Okla. 718, 123

Pac. 1049; Strutwear Knitting Co. v. Olson (three-Judge case), 13 Fed. Supp. 384.)

11. Where there is no actual or apparent violence threatening public safety, the use of military force which interferes with property rights will be enjoined.

12. A Governor's proclamation of martial law does not legalize his use of military force where, in fact, as in this case, there is no violence or disorder or resistance to civil authority.

13. The Governor's action in using military force in this case is subject to judicial review.

14. A state Governor using military force in contravention of the limitations of the Federal Constitution may [fol. 295] be enjoined by a Federal Court.

15. Such a Governor is still subject to injunction, if he retains military personnel on the grounds in uniform and on active duty under such declaration. (Strutwear Knitting Co. v. Olson, three judge case, 13 Fed. Supp. 384, and cases therein cited.)

16. The Governor's use of military force in the present situation was illegal and in violation of the due process clause of the Fourteenth Amendment.

17. The directors of the defendant Grand River Dam Authority are appointed by the Governor and are removable by him for "inefficiency, neglect of duty, or misconduct in office" upon mere ten days' written notice by the Governor to such directors without any hearing. (Okla. Session Laws of 1935, Ch. 70, Art. 4, Sec. 3, as amended by Okla. Sess. Laws of 1939, Ch. 70, Art. 1, Sec. 1.)

18. The defendants Singleton, Meacham, and Bailey are appointed by the Governor, by and with the consent of the Oklahoma Senate, but are removable by the Governor alone. (Okla. Sess. Laws of 1939, Ch. 50, Art. 1, Sec. 2.)

19. Its general counsel was instructed by the authority not to remove the suit in the District Court of Ottawa County to the Federal Court.

20. The said State court suit would have been removable to the federal court if all the defendants thereto had joined in the removal. (GRDA v. Going, 29 Fed. Supp. 316.)

21. The State court suit being one affecting the property interests of the United States, and being subject to removal it does not follow that the conclusion should be made that there was good faith and no collusion.

22. The State court suit is a suit against the United States to which the United States is an indispensable party.

[fol. 296] 23. The United States may not be sued without the consent of Congress.

24. Congress has not consented for the United States to be sued by the State of Oklahoma in the State courts of Oklahoma in respect of the subject matter of the Ottawa County suit, and no officer of the United States has power to give to the District Court of Ottawa County, Oklahoma, jurisdiction of said suit against the United States.

25. In the State court suit no injunctive relief can be granted or run against the Governor of Oklahoma. (State v. Huston, 27 Okla. 606, 113 Pac. 190.)

26. Section 265 of the Judicial Code does not apply to cases where the United States is protecting its property interests.

27. Section 265 of the Judicial Code does not apply to the present situation where the remedy available in the State court is inadequate.

28. The United States cannot be forced to intervene in the State court suit to protect its property interests.

29. Section 265 of the Judicial Code does not bar this court from enjoining further proceedings in the State court suit. (United States v. Inaba, 291 Fed. 416; United States v. McIntosh, 57 Fed. (2d) 573; United States v. Babcock, 9 Fed. (2d) 160; Babcock v. United States (6th Cir.), 9 Fed. (2d) 905.)

30. The present suit is not a suit against the State but only against State officers acting illegally. (Sterling v. Constantin, 287 U. S. 378, 393-94.)

31. The claim of the state highway commission for damages against the defendant Grand River Dam Authority in respect to flooding of state roads does not appear to raise any constitutional question. None of the lands held by [fol. 297] the Commissioners of the Land Office in said

Area may be classed as public lands. (Trenton v. New Jersey, 262 U. S. 182; Hunter v. Pittsburgh, 207 U. S. 161; Section 7, Enabling Act, June 16, 1906; Betts v. Comrs. Land Office, 27 Okla. 64, 110 Pac. 766.)

32. The Oklahoma statute does not require prepayment of damages as a condition precedent to overflowing or inundating the roads or highways. (Okla. Sess. Laws, 1935, Ch. 70, Art. 4, Sec. 2(h).)

33. The Governor appears to contend that the provisions of the Oklahoma Statute creating the Grand River Dam Authority, a State agency, do not adequately safeguard the rights of the State Highway Commission, another state agency. Though well founded, the use of military force to interfere with the closing or completion of the dam would not be justified. Nor would the Governor and the Highway Commissioners, defendants Meacham, Singleton and Bailey, be justified in procuring the ex parte restraining order from the state court jeopardizing the property interests of the United States, and in which action the United States cannot intervene.

34. The present case was cognizable before a district court of three judges. (Judicial Code, Sec. 266; Sterling v. Constantin, 278 U. S. 378, 393-94; Strutwear Knitting Co. v. Olson (a three judge case), 13 Fed. Supp. 384.)

35. By reason of Section 9 of the Oklahoma Session Laws of 1935, Ch. 70, Art. 4, and further, the conferring of a prior lien on all of the revenues received by the Authority in respect of its properties as security for payment of the bonds owned by the United States, the right, if any, of the State of Oklahoma, or its subdivisions, to payment of any damages by the Authority by reason of overflowing, or [fol. 298] inundation of any public roads or such public property or the requiring of the relocation of roads and highways is wholly junior and subordinate to the interest of the United States as the holder and owner of such bonds.

36. The property rights of the United States in the project, its contract for prior lien on and prior lien to the revenues therefrom and the property interest and funds owned or controlled by the Authority, are prior or superior and senior to any rights or claim of interest on the part of



the State of Oklahoma in or to the project, and any revenues from said project or any property or funds owned or controlled by the Authority are prior, superior, and senior to any claim of the State of Oklahoma or any subdivision thereof because of any alleged indebtedness, liability or obligation of the Authority. Any indebtedness, liability or obligation of the Authority to the State of Oklahoma or any subdivision thereof may be enforced, satisfied or collected only in strict subordination to the foregoing property interest of the United States.

37. The United States is entitled to an injunction restraining further interference with the closing or completion of the dam in order to protect its property rights.

38. A preliminary injunction should issue and let same be submitted accordingly in proper form.

Dated this the 25th day of April, 1940.

Robert L. Williams, United States Circuit Judge.

F. E. Kennamer, United States District Judge.

Alfred P. Murrah, United States District Judge.

[File endorsement omitted.]

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[fol. 299] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

Civil Action No. 351

THE UNITED STATES OF AMERICA

VS.

LEON C. PHILLIPS, Individually and as Governor of the State of Oklahoma, et al.

PRELIMINARY INJUNCTION—Filed April 25, 1940

This cause coming on to be heard on plaintiff's motion for an injunction pendente lite, and the Court finds that all necessary parties have been duly notified of this hearing, and after hearing witnesses in open court and the arguments of counsel, being fully advised in the premises, having made findings of fact and conclusions of law, finds that an injunction should be granted.

It is Ordered That during the pendency of this cause:

(a) The defendants and each of them are enjoined from any interference with the construction or closing of the Grand River Dam;

(b) The defendants and each of them are enjoined from proceeding in any way in the suit numbered 15174 now pending in the District Court of Ottawa County, Oklahoma, entitled State of Oklahoma ex rel. Leon C. Phillips, Governor, and State Highway Commission v. Grand River Dam Authority and others, except to cause said suit to be dismissed or to be removed to this Court; and are further enjoined from commencing any other proceedings seeking the same or substantially similar relief;

(c) The defendants and each of them are enjoined from attempting to enforce or from attempting to receive any benefit from any and all restraining orders or injunctions [fol. 300] heretofore granted in such suit, or from obtaining any order continuing in force or applying for the renewal of any such restraining orders or injunctions;

(d) The defendants Phillips and Ledbetter are enjoined from using any military force pursuant to that certain declaration of martial law promulgated by the defendant Phillips on the 13th day of March, 1940;

(e) The defendants Phillips and Ledbetter are enjoined from causing the Oklahoma National Guard or any part thereof or any military force whatsoever to interfere with or prevent the construction or closing of the Grand River Dam;

(f) The defendants and each of them are enjoined from using or causing to be used any force, military or otherwise, or any process, judicial or otherwise (other than by proper application in the present cause), to interfere with or prevent the construction or closing of the Grand River Dam;

(g) The defendants and each of them are enjoined from taking any step whatsoever, impairing the specific, prompt, and timely performance by the Grand River Dam Authority of its license from the Federal Power Commission and its covenants in the indenture dated as of April 1, 1938, with the First National Bank of Miami;

(h) The defendants and each of them are enjoined from taking any action in frustration of the purpose of the grants made by the Public Works Administration to the Grand River Dam Authority and the loans made by the Public Works Administration to said Authority, or which will prevent the performance by said Authority of its covenants with the Public Works Administration.

(i) The defendants and each of them are enjoined from taking any action which will injure or tend to injure the property rights or the security of the United States in said Grand River Dam.

[fol. 301] It is Further Ordered That this order shall be binding on the defendants and each of them and upon their officers, agents, servants, subordinates, employees and attorneys and upon any person in active concert or participation who receive notice of this order.

And it is so ordered.

Dated April 25th, 1940.

Robert L. Williams, United States Circuit Judge,  
F. E. Kennamer, United States District Judge,  
Alfred P. Murrah, United States District Judge,  
constituting the United States District Court for  
the Northern District of Oklahoma.

[File endorsement omitted.]

[fol. 302] IN UNITED STATES DISTRICT COURT

Civil Action No. 351

[Title omitted]

PETITION FOR APPEAL—Filed May 24, 1940

Come now Leon C. Phillips, individually and as Governor of the State of Oklahoma; Mac Q. Williamson, individually and as Attorney General of the State of Oklahoma; Louis A. Ledbetter, individually and as Adjutant General of the National Guard of the State of Oklahoma; S. H. Singleton, George Meacham and H. E. Bailey, individually and as members of the State Highway Commission of the State of Oklahoma, defendants in the above entitled cause, the petitioners herein, and, for their petition for appeal, respectfully show:

(1) That on April 25, 1940, an order granting a preliminary injunction was made and entered herein in favor of the above named plaintiff and against them, and each of them.

(2) That said Court, in making and entering said order, committed manifest error to their prejudice, and they, and each of them, feeling aggrieved by the making and entry of said order, do hereby jointly and severally appeal therefrom to the United States Supreme Court, for the reasons specified in the assignment of errors filed herewith and made a part hereof.

(3) That there is filed herewith and made a part hereof, a statement as to the jurisdiction of the Supreme Court of the United States, as provided by Rule 12, of the Rules of that Court.

[fol. 303] Wherefore, said defendants, the petitioners herein, jointly and severally pray for the allowance of an appeal from said order to the Supreme Court of the United States for the correction of said errors; that the amount of the cost bond be fixed, conditioned as required by law and reasonable time given them within which to make and file the same; that citation be issued as provided by law, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Supreme Court.

Mac Q. Williamson, Attorney General of Oklahoma, Randall S. Cobb, First Assistant Attorney General of Oklahoma, Address: State Capitol, Oklahoma City, Oklahoma, J. B. Dudley, Duke Duvall, Villard Martin and Garrett Logan, Attorneys for the Defendants Leon C. Phillips, individually and as Governor; Mac Q. Williamson, individually and as Attorney General; Louis A. Ledbetter, individually and as Adjutant General; S. H. Singleton, George Meacham and H. E. Bailey, individually and as members of the State Highway Commission.

Of Counsel: Dudley, Hyde, Duvall & Dudley, Attorneys at Law, Oklahoma City, Oklahoma. Ramsey, Martin & Logan, Attorneys at Law, Tulsa, Oklahoma.

[File endorsement omitted.]



## Civil Action No. 351

[Title omitted]

## ASSIGNMENT OF ERRORS—Filed May 24, 1940

Come now Leon C. Phillips, individually and as Governor of the State of Oklahoma; Mac Q. Williamson, individually and as Attorney General of the State of Oklahoma; Louis A. Ledbetter, individually and as Adjutant General of the National Guard of the State of Oklahoma; S. H. Singleton, George Meacham and H. E. Bailey, individually and as members of the State Highway Commission of the State of Oklahoma, defendants in the above entitled cause, and jointly and severally file the following assignment of errors upon which they will rely in the prosecution of their appeal from the order granting the preliminary injunction entered on the 25th day of April, 1940, which appeal is herewith petitioned for.

The Court erred in granting the order for a preliminary injunction for the following reasons:

1. That said Court erred in overruling the motion to dismiss filed on behalf of these defendants for the reasons set forth in said motion.

2. That said Court erred in overruling the motions dictated into the record on behalf of these defendants at the conclusion of the hearing on March 26, 1940, wherein the Court was requested to deny the application of plaintiff for a temporary injunction.

3. That said Court erred in overruling the motion of these defendants to vacate the restraining order and deny the application of the plaintiff for an interlocutory injunction.

[fol. 305] 4. That said action is a suit against the State of Oklahoma, and the Court had no jurisdiction of the subject matter, and committed fundamental error in issuing said preliminary injunction.

5. That if Leon C. Phillips, in his declaration of martial law, exceeded his authority as Governor and his acts and those of the defendant Ledbetter as the Adjutant General

were unlawful, yet nevertheless the State of Oklahoma on the relation of the Governor and the State Highway Commission had the lawful right to institute the State Court action, and the Court committed fundamental error in enjoining them from the further prosecution thereof.

6. That under the law the State of Oklahoma could prosecute said State Court action on the relation of the State Highway Commission, and the prosecution of said action by said Commission was lawful, and the Court committed fundamental error in restraining the individual members of said Commission from the further prosecution of said action, the action being dismissed by the plaintiff as against the State Highway Commission itself.

7. That if this action is not a suit against the State, and this Court had jurisdiction for any purpose, it had no jurisdiction to enjoin the prosecution of the State Court action, and it committed fundamental error in enjoining the further prosecution of said action.

8. That said Court erred in holding as a matter of law that the State Court action was in effect a suit against the United States.

9. That said Court erred in its conclusions of law in holding that the State Court action was not an adversary one but was in effect collusively brought, because such a conclusion is contrary to the evidence and in conflict therewith, there being no evidence to support such a conclusion.

10. That the State of Oklahoma on the relation of the Governor and the State Highway Commission had the right to bring the State Court action; that Court had jurisdiction, and this Court was without power or authority to enjoin the further prosecution of said action.

11. That under the allegations of the complaint of the plaintiff, this action was not a Three-Judge case, and this [fol. 306] Court mistakenly assumed to act as such, and said preliminary injunction is void and of no force and effect on that account.

12. That said Court erred in denying the findings of fact and conclusions of law requested by these defendants.

13. That said Court erred as to its findings of fact in that the Court therein wholly overlooked and disregarded the

right of the State of Oklahoma acting through these defendants as its officers to prevent the illegal inundation and destruction of its State highways and bridges.

14. That said Court erred in the findings made by it in paragraphs 40, 42, 43, 50, 51, 52, 53, 61 and 64 of its findings of fact in that the same are not sustained by the evidence but are contrary thereto.

15. That said Court erred in concluding in paragraph 16 of its conclusions of law that the Governor's use of military force to prevent State highways from being inundated and destroyed without compensation therefor was illegal and in violation of the due process clause of the Fourteenth Amendment.

16. That said Court erred in concluding in paragraph 20 of its conclusions of law that the State Court action would have been removable to the Federal Court if all the defendants thereto had joined in the removal.

17. That said Court erred in concluding in paragraph 24 of its conclusions of law that no officer of the United States has the power to appear in the State Court action to protect the interests of the United States. (See Section 316, Title 5, U. S. C. A.)

18. That the Court erred in concluding in paragraph 30 of its conclusions of law that the action filed by the United States against these defendants is not a suit against the State of Oklahoma, but only against State officers acting illegally.

19. That the Court erred in concluding in paragraph 32 of its conclusions of law that the Oklahoma statute, Article 4, Chapter 70, Oklahoma Session Laws 1935, does not require prepayment of compensation for the State highways to be inundated and destroyed as a condition precedent to overflowing or inundating said State highways.

[fols. 307-313] 20. That the Court erred in concluding in paragraph 33 of its conclusions of law that the United States cannot intervene in the State Court action to protect its interests.

21. That the Court erred and abused its discretion in granting the preliminary injunction because of each of the matters set forth in the above assignments and for the rea-

son that the evidence was wholly insufficient to authorize its issuance.

Wherefore, these defendants pray that the order or decree granting the preliminary injunction may be reversed and the complaint against these defendants be dismissed.

Dated May 24th, 1940.

Mac Q. Williamson, Attorney General, Randell S. Cobb, First Assistant Attorney General, Address: State Capitol, Oklahoma City, Oklahoma, J. B. Dudley, Duke Duvall, Villard Martin, Garrett Logan, Attorneys for Defendants, Leon C. Phillips, individually and as Governor; Mac Q. Williamson, individually and as Attorney General; Louis A. Ledbetter, individually and as Adjutant General; S. H. Singleton, George Meacham and H. E. Bailey, individually and as members of the State Highway Commission.

Of Counsel: Dudley, Hyde, Duvall & Dudley, Attorneys at Law, Oklahoma City, Oklahoma, Ramsey, Martin & Logan, Attorneys at Law, Tulsa, Oklahoma.

[File endorsement omitted.]

[fol. 314] IN UNITED STATES DISTRICT COURT FOR THE NORTH-  
ERN DISTRICT OF OKLAHOMA

Civil Action No. 351

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

LEON C. PHILLIPS, individually and as Governor of the State  
of Oklahoma, et al., Defendants

ORDER ALLOWING APPEAL—Filed May 29, 1940

The petition of Leon C. Phillips, individually and as Governor of the State of Oklahoma; Mac Q. Williamson, individually and as Attorney General of the State of Oklahoma; Louis A. Ledbetter, individually and as Adjutant General of the National Guard of the State of Oklahoma;



S. H. Singleton, George Meacham and H. E. Bailey, individually and as members of the State Highway Commission of the State of Oklahoma, in the above entitled cause for an appeal to the Supreme Court of the United States from the order granting a preliminary injunction entered in the above cause on the 25th day of April, 1940, is hereby granted and the appeal is allowed upon said petitioners giving bond according to law in the sum of Three Hundred Dollars with sufficient sureties conditioned as required by law to pay all costs that may be assessed against said petitioners.

It is further ordered that a transcript of the record, proceedings and papers upon which the order granting the preliminary injunction was made, duly authenticated, be transmitted to the Supreme Court of the United States.

Dated May 25th, 1940.

(Signed) Robert L. Williams, United States Circuit Judge. (Signed) F. E. Kennamer, United States District Judge. (Signed) Alfred P. Murrah, United States District Judge.

[File endorsement omitted.]

[fols. 315-320] Citation in usual form showing service on Whit Mauzy, et al., filed June 1, 1940, omitted in printing.

[fol. 321] IN UNITED STATES DISTRICT COURT

Civil Action No. 351

[Title omitted]

PRAECIPE FOR RECORD—Filed June 1, 1940

To the Clerk of the United States District Court for the Northern District of Oklahoma:

You will please prepare, certify, and transmit to the Supreme Court of the United States, under Rule 10 of rules prescribed by the Supreme Court of the United States governing procedure in that Court, a copy of the following portion of the record and proceedings in the above case:

- (1) Complaint including all exhibits;
- (2) Temporary restraining order and order to show cause entered March 19, 1940;

(3) Motion to dismiss filed March 25, 1940, on behalf of defendants Leon C. Phillips, individually and as Governor of the State of Oklahoma; Mac Q. Williamson, individually and as Attorney General of the State of Oklahoma; Louis A. Ledbetter, individually and as Adjutant General of the National Guard of the State of Oklahoma; and S. H. Singleton, George Meacham, and H. E. Bailey, individually and as Members of the State Highway Commission of the State of Oklahoma;

(4) Order of March 25, 1940, overruling above motion to dismiss;

(5) Dismissal as to the State Highway Commission of the State of Oklahoma, a body corporate;

(6) That portion of transcript of oral testimony as set forth in Exhibit "A" attached hereto.

(7) Executive military order of March 13, 1940, declaring martial law, being Plaintiff's Exhibit No. 1;

(8) Motion to vacate restraining order and deny application for temporary and/or interlocutory injunction, filed April 25, 1940, on behalf of defendants Leon C. Phillips, individually and as Governor of the State of Oklahoma; Mac Q. Williamson, individually and as Attorney General [fol. 322] of the State of Oklahoma; Louis A. Ledbetter, individually and as Adjutant General of the National Guard of the State of Oklahoma; and S. H. Singleton, George Meacham, and H. E. Bailey, individually and as Members of the State Highway Commission of the State of Oklahoma;

(9) Order of April 25, 1940, overruling the above motion;

(10) Findings of fact and conclusions of law requested by defendants Leon C. Phillips, individually and as Governor of the State of Oklahoma; Mac Q. Williamson, individually and as Attorney General of the State of Oklahoma; Louis A. Ledbetter, individually and as Adjutant General of the National Guard of the State of Oklahoma; and S. H. Singleton, George Meacham, and H. E. Bailey, individually and as Members of the State Highway Commission of the State of Oklahoma;

(11) Findings of fact filed April 25, 1940;

(12) Conclusions of law filed April 25, 1940;

(13) Preliminary Injunction entered April 25, 1940;

(14) Petition for allowance of appeal to the Supreme Court of the United States;

- (15) Assignments of Error;
- (16) Statement of basis of contention that Supreme Court of United States has jurisdiction upon appeal to review the order appealed from;
- (17) Order allowing appeal;
- (18) Citation and Proof of Service Thereof.
- (19) Statement directing attention of appellees to paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States.
- (20) Proof of Service of the Petition for Appeal, Assignment of Errors, Statement as to Jurisdiction of the Supreme Court of the United States, Order Allowing Appeal, and Statement directing attention of appellees to Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States.
- (21) This Praecipe for Record, omitting Exhibit "A" attached hereto, and Proof of Service of said Praecipe.

Dated this 29th day of May, 1940.

[fol. 323] Mac Q. Williamson, Attorney General of Oklahoma. Randell S. Cobb, First Assistant Attorney General of Oklahoma, Address: State Capitol, Oklahoma City, Oklahoma. J. B. Dudley, Du'ce Duvall, Villard Martin and Garrett Logan, Attorneys for the Defendants Leon C. Phillips, individually and as Governor; Mac Q. Williamson, individually and as Attorney General; Louis A. Ledbetter, individually and as Adjutant General; S. H. Singleton, George Meacham and H. E. Bailley, individually and as members of the State Highway Commission.

Of Counsel: Dudley, Hyde, Duvall & Dudley, Attorneys at Law, Oklahoma City, Oklahoma. Ramsey, Martin & Logan, Attorneys at Law, Tulsa, Oklahoma.

[fol. 324] Service of a true copy of the above Praecipe for Record on The United States of America on the 29th day of May, 1940, is hereby acknowledged.

(Signed) Whit Y. Mauzy, United States District Attorney for the Northern District of Oklahoma.

Service of a true copy of the above Praecipe for Record on the Grand River Dam Authority, Ray McNaughton, H. Eichenberger, Earl Ward, R. P. Colley, and M. Duncan,

individually and as directors of the Grand River Dam Authority; T. P. Clonts, individually and as General Manager of the Grand River Dam Authority, and W. R. Holway, individually and as Consulting Engineer of the Grand River Dam Authority; on the 29th day of May, 1940, is hereby acknowledged.

(Signed) R. L. Davidson, Attorney of record for said parties.

Service of a true copy of the above Praecipe for Record on the Massman Construction Company, a corporation, on the 29th day of May, 1940, is hereby acknowledged.

(Signed) Richard L. Wheatley, Attorney of record for Massman Construction Company, a corporation.

Service of a true copy of the above Praecipe for Record on the First National Bank of Miami, Oklahoma, on the 29th day of May, 1940, is hereby acknowledged.

(Signed) E. C. Fitzgerald, Attorney of record for the First National Bank of Miami, Oklahoma.

[File endorsement omitted.]

[fol. 325] IN UNITED STATES DISTRICT COURT

ORDER GRANTING EXTENSION OF TIME—Filed June 1, 1940

This matter coming on for hearing this 1st day of June 1940; upon the application of the United States for an extension of time within which to file a cross designation of record and the United States appearing by Whit Y. Manzy, United States Attorney for the Northern District of Oklahoma, and the defendant being represented by Villard Martin, of the firm of Ramsey, Martin and Logan and the court being fully advised in the premises finds that for good cause shown, an extension of time should be granted to the United States for filing a cross designation of record.

It Is, Therefore, Ordered that the United States be and it hereby is granted an extension of time until June 20, 1940 in which to file its cross designation of record.

And It Is So Ordered.

F. E. Kennamer, Judge.



O. K. as to Form. Service of Copy Acknowledged, this 1st day of June, 1940.

Villard Martin, of Counsel for Defendant.

[File endorsement omitted.]

[fol. 325a] IN UNITED STATES DISTRICT COURT

No. 351 Civil

[Title omitted]

ORDER AS TO ORIGINAL EXHIBITS—Filed June 17, 1940

This matter coming on for hearing this 17th day of June, 1940 and the clerk is hereby directed and ordered, in making up his transcript of record, to include all original exhibits therein.

And It Is So Ordered.

(s.) F. E. Kennamer, United States District Judge.

[File endorsement omitted.]

[fol. 326] IN UNITED STATES DISTRICT COURT

Civil No. 351

[Title omitted]

CROSS-DESIGNATION OF RECORD ON APPEAL—Filed June 17, 1940

The United States, appellee herein, hereby designates the following portions of the record, proceedings, and evidence to be included in the record on appeal in addition to the portions designated by the appellants:

1. Affidavits of John M. Carmody, Clark Foreman, Alexander Speer, Maxwell H. Elliott, Jr., W. R. Holway, Victor H. Cochrane, Lester M. Marx, Floyd E. Conway, Lee Hendrix, Walter Panter, and Peter J. Chamales. These affidavits are to be printed in the record after the complaint and exhibits thereto, and before the temporary restraining order and order to show cause entered March 19, 1940.

2. Separate Answer of defendant Massman Construction Company, filed March 25, 1940.

3. Answer of defendants Grand River Dam Authority, Ray McNaughton, H. Eichenberger, Earl Ward, R. P. Colley, M. Duncan, T. P. Clonts, and W. R. Holway, filed March 25, 1940.

[fol. 327] 4. All of the Transcript of Oral Evidence, certified by Geo. H. Lessley, Official Court Reporter, as corrected by stipulation, less the following omissions of immaterial matter (all references are inclusive):

page 3, line 24 (beginning "Mr. MAUZY"), to page 4, line 12;

page 6, line 20, to page 9, line 13;

page 10, lines 3 to 17;

page 11, line 1, to page 12, line 6;

page 12, lines 17 to 18;

page 13, line 7 (beginning "I would") to line 18;

page 14, line 21, to page 15, line 2;

page 15, lines 8 to 12;

page 15, line 18, to page 16, line 19;

page 17, lines 2 to 5;

page 17, lines 12 to 23;

page 18, line 2, to page 20, line 14;

page 20, lines 19 to 23;

page 21, line 3 (beginning "The first one") to page 22, line 18;

page 22, line 25, to page 23, line 5;

page 23, line 14, to page 29, line 7;

page 30, line 2, to page 35, line 22;

page 36, lines 7 to 23;

page 51, line 23, to page 52, line 4;

page 58, line 24, to page 59, line 3;

page 80, lines 6 to 10;

page 125, lines 13 to 18;

page 154, lines 19 to 20;

page 155, lines 1 to 5;

page 171, lines 13 to 15;

[fol. 328] page 171, lines 19 to 20;

page 171, line 25, to page 172, line 4;

page 183, lines 5 to 10;

page 183, lines 14 to 23;

page 184, lines 1 to 6;

page 184, lines 11 to 13;  
 page 184, lines 23 to 24;  
 page 185, line 12, to page 188, line 16;  
 page 192, lines 3 to 13;  
 page 202, line 1, to page 204, line 2;  
 page 206, line 17 (beginning "These cases that"), to page 207, line 9;  
 page 207, line 14, to page 208, line 1f;  
 page 209, lines 7 to 11;  
 page 209, line 23, to page 211, line 9;  
 page 211, line 16, to end;  
 omit Reporter's certificate.

The above designation includes the portions of the transcript designated by the appellants. A copy of said transcript as corrected by stipulation is attached hereto.

5. Government's Exhibit 2. In printing, insert in lieu thereof the following notation: "Government's Exhibit 2 is included in 'Exhibit B' attached to the complaint."

6. Government's Exhibit 3. In printing, insert in lieu thereof the following notation: "Government's Exhibit 3 is included in 'Exhibit B' attached to the complaint."

7. Government's Exhibit 4 (print only the following matter): Index pages 1, 2 and 3; and the following documents (pages refer to the numbered pages of the bond transcript [fol. 329] script):

Pages	Documents
1-2	Certificate of the General Counsel for the Grand River Dam Authority as to the legality and validity of the proceedings for the issuance of 4% revenue bonds of the Grand River Dam Authority in the aggregate principal amount of \$12,500,000, such certificate being dated June 25, 1938.
4-7	Certification of Secretary of Authority, dated June 25, 1938.
130-132	Certificate of approval by Attorney General of the State of Oklahoma certified as correct by the Assistant Auditor of the State of Oklahoma.
135-135j	Opinions of Counsel relative to bonds respectively dated May 25, July 12, August 18, October 18, 1939 and January 15, 1940.

## Pages

## Documents—Continued

- 143-149 . Certified extracts from minutes of a called meeting of the Authority, held November 27, 1937, at which was adopted Resolution No. 6 (Bond Resolution) and at which form of Indenture was approved.
- 326-327 Certified extracts from minutes of a regular meeting of the Board of Directors of the Authority, held May 2, 1938, showing adjournment to May 6, 1938.
- 328-329 Certified extracts from minutes of a recessed meeting of the Board of Directors of the Authority, held May 6, 1938, showing adjournment to May 10, 1938.
- 330-334 Certified extracts from minutes of a recessed meeting of the Board of Directors of the Authority, held May 10, 1938, at which were adopted Resolution amending Sub-division Two (2) of Resolution No. 6 (Bond Resolution), and Resolution correcting and revising form of Indenture.
- 531-538 Certified extracts from minutes of a special meeting of the Board of Directors of the Authority, held May 9, 1939, at which was adopted Resolution No. 240—a resolution awarding \$2,000,000 Bonds to the United States of America.
- 539-546 Certified extracts from minutes of regular meetings of the Board of Directors of the Authority, held June 5, June 6 and June 20, 1939, at which latter meeting was adopted Resolution No. 280—a resolution awarding \$2,000,000 Bonds to the United States of America.
- 547-556 Certified extracts from minutes of regular meetings of the Board of Directors of the Authority, held July 3, July 7, July 11 and July 14, 1939, at which was adopted Resolution No. 306—a resolution awarding \$3,000,000 Bonds to the United [fol. 330] States of America.
- 557-562 Certified extracts from minutes of regular meetings of the Board of Directors of the Authority, held September 4 and September 5, 1939, at which was adopted Resolution No. 373—a resolution awarding \$3,000,000 Bonds to the United States of America.



## Pages

## Documents—Continued

- 563-566 Certified extracts from minutes of special meeting of the Board of Directors of the Authority, held November 7, 1939, at which was adopted Resolution No. 438—a resolution awarding \$1,563,000 Bonds to the United States of America.
- 567-568 No-Litigation Certificate.
- 571-572 Certificate of State Auditor.
- 573 Opinion regarding outstanding obligations, dated May 23, 1939 and signed by the General Counsel of the Authority.
- 574 Certificate of no adverse legislation, dated May 23, 1939, and signed by the Attorney General for the State of Oklahoma.
- 579-580 Certificate of Attorney General of the State of Oklahoma.
- 582-584 Signature and No-Litigation Certificate, dated May 23, 1939.
- 585 Financial Certificate, dated May 23, 1939.
- 590-591 Certificate of State Auditor.
- 592 Opinion Regarding Outstanding Obligations.
- 597-598 Certificate of Attorney General of the State of Oklahoma.
- 600-602 Signature and No-Litigation Certificate, dated July 12, 1939.
- 603 Financial Certificate, dated July 12, 1939.
- 608-609 Certificate of State Auditor.
- 610 Opinion Regarding Outstanding Obligations.
- 615-616 Certificate of Attorney General of the State of Oklahoma.
- 618-620 Signature and No-Litigation Certificate, dated August 18, 1939 (Exhibit B).
- 621-623 Signature and No-Litigation Certificate, dated [fol. 331] August 18, 1939 (Exhibit B-2).
- 624 Financial Certificate, dated August 18, 1939.
- 627-628 Certificate of State Auditor.
- 629 Opinion Regarding Outstanding Obligations.
- 634-635 Certificate of Attorney General of the State of Oklahoma.
- 637-639 Signature and No-Litigation Certificate, dated October 18, 1939. (Exhibit B)
- 640 Financial Certificate, dated October 18, 1939.
- 647 Opinion Regarding Outstanding Obligations.

Pages	Documents—Continued
652-653	Certificate of Attorney General of the State of Oklahoma.
655-658	Signature and No-Litigation Certificate, dated January 15, 1940.
659	Financial Certificate, dated January 15, 1940.

8. Government's Exhibit 5. In printing, insert in lieu thereof the following notation: "Government's Exhibit 5 is identical with 'Exhibit A' attached to the complaint."

9. Government's Exhibit 6. In printing, insert in lieu thereof the following notation: "Government's Exhibit 6 is identical with 'Exhibit C' attached to the complaint."

10. Government's Exhibit 7.

11. Government's Exhibit 8a (reproduce in facsimile).

12. Government's Exhibits 9 and 10 (reproduce in facsimile).

13. Government's Exhibit 11 (reproduce in facsimile).

14. Government's Exhibit 11(a), 11(b), and 11(d).

[fol. 332] 15. Government's Exhibit 11(c). In printing, insert in lieu thereof the following notation: "Government's Exhibit 11(c) is identical with Government's Exhibit 1."

16. Government's Exhibits 12 and 12(b).

17. Government's Exhibit 12(a). In printing, insert in lieu thereof the following notation: "Government's Exhibit 12(a) is identical with Government's Exhibit 11(b)."

18. Government's Exhibit 13. In printing, insert in lieu thereof the following notation: "Government's Exhibit 13 is identical with 'Exhibit D' attached to the complaint."

19. Government's Exhibit 13(a).

20. Government's Exhibits 14, 14(a), 14(b), 14(c) and 14(d) (reproduce in facsimile).

21. Government's Exhibit 15 (reproduce in facsimile).

22. Government's Exhibit 16.

23. Government's Exhibit 17 (reproduce in facsimile).

24. Government's Exhibits 18, 19, 20, 21, 22, and 23.

25. Massman Construction Company's Exhibit 2.

26. Order extending time for the United States to file a cross-designation of records, entered June 1, 1940.

[fol. 333] 27. This cross-designation of record, omitting attached transcript.

Whit Y. Mauzy, United States Attorney for the Northern District of Oklahoma. (S.) Francis M. Shea, Assistant Attorney General. (S.) Frederick Barnays Wiener, Special Assistant to the Attorney General, of Counsel.

Service of copy acknowledged this 17th day of June, 1940. Villard Martin, Garrett Logan, attorneys for defendants, for whom said attorneys appear as attorneys of record.

June 17th, 1940.

[File endorsement omitted.]

[fol. 334] Clerk's certificate to transcript of record omitted in printing.

[fol. 335] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

No. 315 Civil

[Title omitted]

#### STATEMENT OF EVIDENCE

[fol. 336] Be it remembered, That on this 25th day of March, 1940, the above entitled and numbered cause came on for hearing before the Honorable Robert L. Williams, United States Circuit Judge for the Tenth Judicial Circuit, Honorable Franklin E. Kennamer, United States District Judge for the Northern District of Oklahoma, and the Honorable Alfred P. Murrah, United States District Judge for the Northern District of Oklahoma, United States District Judge for the Eastern District of Oklahoma, and United States Dis-

trict Judge for the Western District of Oklahoma, at Vinita, in said Northern District of Oklahoma, whereupon the following proceedings were had and done, to-wit:

#### APPEARANCES

Mr. Whit Y. Mauzy, United States District Attorney for the Northern District of Oklahoma; Mr. Chester A. Brewer, Assistant United States District Attorney for the Northern District of Oklahoma; Mr. Frederick Bernays Wiener, Special Assistant Attorney General, of Washington, D. C.; Mr. Maxwell G. Elliott, Jr., of Washington, D. C., and Mr. Peter J. Chamales, of Vinita, Oklahoma, Attorneys for the Public Works Administration; Mr. Willard W. Gatchell, of Washington, D. C., Attorney for the Federal Power Commission; Attorneys for the Government.

Messrs. Ramsey, Martin & Logan, of Tulsa, Oklahoma, by Villard Martin, Garrett Logan and Tom Finney; Mr. J. B. Dudley, of Oklahoma City, Oklahoma; and Mr. Duke Duvall, of Oklahoma City, Oklahoma; Attorneys for the defendants, Leon C. Phillips, individually, Louis A. Ledbetter, individually, and S. H. Singleton, George Meacham, and H. E. Bailey, individually.

Mr. Mac Q. Williamson, Attorney General of the State of [fol. 337] Oklahoma; Mr. Randall Cobb, First Assistant Attorney General of the State of Oklahoma; and Mr. Fred Hansen, Assistant Attorney General of the State of Oklahoma; Attorneys for the State Officials as such Officials, and also for the Defendant, Mac Q. Williamson, individually.

Mr. R. L. Davidson, of Tulsa, Oklahoma, Attorney for the Grand River Dam Authority; Ray McNaughton, H. Eichenberger, Earl Waid, R. C. Colley, and M. Duncan, individually and as Directors of the Grand River Dam Authority; T. P. Clonts, individually and as General Manager of the Grand River Dam Authority; and W. R. Holway, individually and as Consulting Engineer of the Grand River Dam Authority.

Mr. Richard E. Wheatley, of Vinita, Oklahoma; Mr. Roy W. Crimm, of Kansas City, Missouri; and Mr. James E. Burke, of Kansas City, Missouri; Attorneys for the defendant, Massman Construction Co.

Mr. E. C. Fitzgerald, of Miami, Oklahoma, Attorney for the defendant, First National Bank of Miami, Oklahoma, Trustee.



## PRELIMINARY DISCUSSION

The Court (Judge Williams): The matter for hearing this morning is United States against Leon C. Phillips, individually and as Governor of the State of Oklahoma, the Attorney General, and others.

[fol. 338] Mr. Mauzy: Now if Your Honors please, when this complaint was filed the State Highway Commission of Oklahoma was named as a party defendant. The reason that was done was because there was a State Court proceeding that had been brought, State Highway Commission, ex rel State of Oklahoma. We have given that considerable thought, and probably the State Highway Commission is an arm of the State itself, and so that there will be no doubt whatsoever, we at this time would like to ask permission to dismiss in so far as this action pertains to the State Highway Commission, retaining as defendants the members thereof.

The Court (Judge Williams): You dismiss in so far as it reads the Commission as a Commission?

[fol. 339] Mr. Mauzy: Yes, sir.

The Court (Judge Williams): But not against the individual members thereof?

Mr. Mauzy: Yes, Your Honor.

The Court (Judge Williams): Very well.

Mr. Davidson: If Your Honors please, I don't know whether that order should be made or not. The State Highway Commission is asserting a claim against Grand River Dam Authority for inundating State roads and bridges, and in this case we have filed an answer in which we are asking this come under the Federal Declaratory Judgment Act to determine the rights of the respective parties, and it occurs to me, since the Commission is asserting this claim against us, they should be retained as parties for the purpose of adjudicating that right.

The Court (Judge Williams): Here is what will protect you, is to permit the Government to dismiss their claim as set out against the Commission as a Commission, but to permit the Grand River Dam Authority, in doing that it is to be without prejudice as against the answer filed by the Dam Authority setting up a claim as against the Highway Commission.

Mr. Davidson: We are not setting up any claim against the Highway Commission. The Highway Commission is asserting a claim against us.

The Court (Judge Williams): For a declaratory judgment. That part is not dismissed, but retained by the court [fol. 340] for future order. Now that will make the record. Does that satisfy you, Senator Davidson?

Mr. Davidson: That is entirely agreeable.

The Court (Judge Williams): Is that agreeable to the Government?

Mr. Mauzy: Yes, Your Honor.

The Court (Judge Williams): Any other objection by any litigant to this order? If not, we will let the record so show.

Mr. Mauzy: Now if the court please, there has just been served upon us a motion to dismiss, which has been filed by the various defendants, and I presume that will be the first in order.

The Court (Judge Williams): The motion then will be treated as refiled after the orders just made. Will that be satisfactory, gentlemen?

Mr. Williamson: Quite all right. As a matter of fact our motion has not been formally filed.

The Court (Judge Williams): It will be permitted to be filed now.

[fol. 341]

#### MOTION TO DISMISS

(Thereupon the motion to dismiss was argued by counsel for the respective parties, at the conclusion of which arguments the following proceedings were had and done, to-wit:)

#### RULING ON MOTION TO DISMISS

The Court (Judge Williams): It is the unanimous opinion of this court that at the present time the motion to dismiss for want of jurisdiction should be overruled and denied, and it is accordingly overruled and denied, and all exceptions, if necessary thereto, are saved. Now then we will ask the announcement as to the presentation of evidence upon the issues, and as to which side wants to introduce evidence. There are some other matters. This question on the declaratory judgment, we are not ruling

on that now. That will have a future consideration, but [fol. 342] it is on the controversy between the United States Government and the defendants as made by the United States Government.

Mr. Cobb: If the court please, you said to show the exceptions were saved, and I want to also state, Randall S. Cobb, Assistant Attorney General, on behalf of the following defendants save exceptions to the ruling of the court overruling the motion to dismiss.

The Court (Judge Williams): Now the exceptions are saved as to each defendant.

Mr. Cobb: All right, I want that to be understood.

[fol. 343] Mr. Mauzy: Your Honor please, under rule 65 I am unable to determine definitely whether or not the restraining order issued by Judge Kennamer remains in force.

The Court (Judge Williams): We have talked about that. The restraining order heretofore issued will be continued in force until otherwise ordered by this court. That will be the order now, gentlemen. We have discussed that, and think it ought to be kept in force until the hearing is over, and that will be the order. It is continued in force until otherwise ordered by this court.

The Court (Judge Williams): Very well, court will recess until tomorrow morning at 9:30.

(Thereupon the further hearing of this cause was recessed until 9:30 o'clock, A. M., tomorrow morning.)

At 9:30 o'clock, A. M., March 26, 1940, court met pursuant to recess, the parties being present and represented by counsel as hereinbefore noted, whereupon the following proceedings were had and done, to-wit:

[fol. 344] The Court (Judge Williams): We will now proceed to hear the evidence in the case of United States against Phillips, and others.

Mr. Cobb: If the court please, the Attorney General and special counsel representing the State officials desire to go

ahead and try the case upon the application for a temporary injunction, and we are not filing an answer at this time.

Mr. Mauzy: Now, if Your Honors please, I think we can save some time. The Grand River Dam Authority has filed an answer, and also the Massman Construction Company, wherein it is admitted that they are unable to respond in damages to the United States in the sum of \$11,563,000.00 odd dollars, and it is my understanding the attorneys will stipulate that the defendants could not severally or in the aggregate respond in damages to that [fol. 345] amount. I talked to the Attorney General and also to Judge Dudley.

The Court (Judge Williams): Is that so agreed?

Mr. Cobb: Yes sir.

The Court (Judge Williams): The record may so show such agreement.

Mr. Dudley: I suppose you have reference to the parties.

Mr. Mauzy: Yes, all the defendants.

Mr. Dudley: Not the State of Oklahoma.

Mr. Mauzy: No sir, we are not suing the State of Oklahoma.

#### OFFERS IN EVIDENCE

Your Honors please, I now offer in evidence what has been marked Government's Exhibit No. 1, which is a certified copy of the Executive Military Order declaring martial law.

The Court (Judge Williams): What number is that exhibit?

Mr. Mauzy: Government's Exhibit No. 1.

The Court (Judge Williams): Any objection to that?

Mr. Cobb: No objection.

The Court (Judge Williams): No objection. It is admitted and read. Let the record show it was read in evidence.

[fol. 346] Mr. Wiener: If the court please, as Government's Exhibit no. 2 I offer a certified copy of the Offer of the United States, through the Public Works, to the



Grand River Dam Authority, together with terms and conditions, and subsequent waivers. It is certified by the Executive Officer of the P. W. A.

The Court (Judge Williams): That is Government's Exhibit No. 2?

Mr. Wiener: Yes, Your Honor, Government's Exhibit No. 2.

The Court (Judge Williams): And it is admitted in evidence, and considered read.

[fol. 347] Mr. Wiener: As Government's Exhibit next in order I offer a certified copy of the acceptance resolution of the Grand River Dam Authority accepting that offer.

The Court (Judge Williams): Now this is Exhibit No. 3.

Mr. Wiener: Yes, Your Honor.

The Court (Judge Williams): Let the record show it is offered and read in evidence.

[fol. 348] Mr. Cobb: No objection.

Mr. Wiener: As Government's Exhibit No. 4 I offer this rather formidable looking document, which is a certified copy of the bond transcript. The particular portions to which I desire to call attention are the eight resolutions by the Grand River Dam Authority's Board of Directors authorizing the issuance of bonds according to Section 10 of the Enabling Act.

Mr. Wiener: Yes, Your Honor. 143 to 149; 229 to 232; 320 to 330; 531 to 538; 539 to 546; 547 to 556; 557 to 562; 563 to 566. Those are all resolutions of the Board of Directors pursuant to the terms of Section 10 of the Enabling Act.

[fol. 350] Mr. Wiener: There are some other papers in Government's Exhibit No. 4 which I would like to refer to. They are certificates of the Attorney General of Oklahoma, Mr. Williamson, who is a defendant in this suit.

Mr. Wiener: There are five certificates of the Attorney General in the matter, General Williamson, pursuant to the requirements of the Act that all bonds issued by the Authority must be approved by the Attorney General. One is attached to each resolution, and they appear at pages 579 to 580; 597 to 598; 615 to 616; 634 to 635; and 652 to 653.

[fol. 352] Two other certificates I want to call attention to: One is a signature and no-litigation certificate signed by the Chairman and Secretary of the Grand River Dam Authority, dated January 15, 1940, and accompanied the papers on the last requisition for funds, stating that no litigation was pending or threatening, overhangs the project, except certain suits which are enumerated.

[fol. 353] Then also on page 659 of this exhibit there is a certificate by the Treasurer of the Grand River Dam Authority that the financial condition of the authority is at least as favorable as it was on the date of its application for the loan and grant from the Government.

Those are the documents which are contained in this bond transcript which we wish particularly to call to the court's attention at this time.

[fol. 354] The Court (Judge Williams): Now while you are passing, what is the purpose of specifically calling the attention of the court to those provisions?

Mr. Cobb: That these bonds were issued for the purpose of acquiring funds to construct this project, and these bonds are issued pursuant to the Indenture, and that Indenture is made a part of this bond contract.

The Court (Judge Williams): Now that shows that the lien can never be fastened on the corpus of the property, but solely on the income of the property.

Mr. Cobb: Yes sir.

The Court (Judge Williams): And the Legislative inferences are there, that that was to be for the benefit of this State in perpetuity, and that no bond holder could ever acquire the title thereto. Do you agree to that construction?

Mr. Cobb: Yes sir.

The Court (Judge Williams): Does the other side agree to that construction?

[fol. 355] Mr. Wiener: Yes sir.

[fol. 356] Mr. Wiener: As Government's Exhibit No. 5 I offer a certified copy of the executed indenture, to which Mr. Cobb has referred. That in the bond transcript is only the resolution authorizing the form of the indenture. [fol. 357] Here is an exhibit as executed.

The Court (Judge Williams): What exhibit is that?

Mr. Wiener: Government's Exhibit No. 5.

The Court (Judge Williams): Let the record show that Government's Exhibit No. 5 is offered in evidence, admitted in evidence, and read in evidence.

Mr. Wiener: As Government's Exhibit No. 6 I offer a certified copy of the license issued on July 26, 1939, by the [fol. 358] Federal Power Commission.

The Court (Judge Williams): Exhibit 6 is offered, and admitted, and read in evidence.

Mr. Cobb: The defendants represented by the State object to the introduction of Government's Exhibit No. 6 for the reason that it has no bearing upon the issues in this case.

The Court (Judge Williams): This is Federal Power license?

Mr. Wiener: Yes, Your Honor.

The Court (Judge Williams): No objection to the form of certificates, but only on the ground of its immateriality, and on that ground it is overruled.

Mr. Martin: On behalf of the individual defendants we object on the ground the Federal Power Commission had no power or jurisdiction to issue the license.

The Court (Judge Williams): Very well, that is overruled too. If that is a part of the dam, or a navigable stream, as far as I am concerned I reach the conclusion they have jurisdiction.

Mr. Wiener: I think Judge Kennamer did in Authority vs. Going.

The Court (Judge Kennamer): Mr. Martin is well advised as to how I reached that decision.

The Court (Judge Williams): In addition to that in the old days flat boats went up that Grand River, but you don't have to go to that extent. If it is a near-by arm, and it is [fol. 359] a near-by arm of a river that is still navigable.

BENJAMIN WARDEN THORON, called as a witness on behalf of the complainant, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

• Direct examination.

By Mr. Wiener:

Q. Please state your name, residence and occupation?

A. Benjamin Warden Thoron, resident of Washington, D. C., Director of the Finance Division of the Public Works Administration in the Federal Works Agency.

Q. How long have you been Director of the Finance Division?

A. Continuously since June, 1938. Prior to that through, from November, 1935, to November, 1937.

Q. And what were you in between?

A. I was Chief of the Bond service section in the self liquidating division of the Reconstruction Finance Corporation.

Q. And prior to November, 1935, did you hold any official position with the Federal Government?

A. I was Finance Examiner and Assistant Director of the finance division of the Public Works Administration from 1933.

Q. Prior to 1933 did you have any experience with bonds?

A. I was in the investment banking business for about six years.

[fol. 360] Q. As Director of the Finance Division of P. W. A. what are your duties with respect to approving or passing upon applications for funds?

A. It is my duty to review the analyses of the financial situation of the borrower, and the estimates of the operations of any revenue producing utility, or other project, and to make recommendations to the Administrator as to the quality of the bonds.

Q. About how many applications have you passed on in your capacity as Finance Director of P. W. A., roughly?



A. Something on the order of ten thousand.

Q. And how many of those, roughly, have you approved?

A. About thirty-five hundred.

Q. And what is the aggregate amount of the bonds and other securities purchased by the P. W. A. on the basis of your approval?

A. About \$500,000,000.00.

Q. And will you state to the court the governing criterion from the financial point of view of your approval of those bonds, in particular reference to revenue bonds?

A. A governing consideration has been a determination whether in the normal conduct of the business revenues sufficient to pay for all costs of operating and maintaining the system, and repaying the bonds in accordance with their terms would be available.

Q. Now this some \$500,000,000.00 bonds you have approved for P. W. A., are those still all held by the Federal Government?

A. No sir.

Q. What were done with those that were not?

[fol. 361] A. A small portion of them have been repaid in accordance with their terms, have matured and been paid; the larger amount have been sold to investors, to the public generally, by the Public Works Administration, acting partly directly and partly through the Reconstruction Finance Corporation.

Q. Were those sales made at a profit or loss?

A. At a profit in the aggregate.

Q. What were your duties at the R. F. C. during the period you served there?

A. I organized a section to service the port folio of bonds which the Reconstruction Finance Corporation bought at that time from the Public Works Administration, to maintain contact with the borrowers, and to advise the Treasurer of the Reconstruction Finance Corporation on the sale of those bonds.

Q. And have you now, as Finance Director of P. W. A., any duties with respect to the sale of bonds and other securities by the P. W. A.?

Mr. Dudley: We object to these questions and answers along that line as wholly immaterial.

Mr. Wiener: Perhaps I can explain what the purpose is. I am going to ascertain two things from this witness. First

the data as to the ownership of the Grand River Dam Authority bonds.

The Court (Judge Williams): This is preliminary to reach that question.

Mr. Wiener: That is one. And the second is, I want to develop from this witness what effect the acts complained [fol. 362] of in this suit would have on the marketability of those bonds, and that is the reason I am trying to qualify the witness.

The Court (Judge Williams): The objection is overruled.

Mr. Dudley: Exceptions.

Q. (Question read by the Reporter).

A. It is my duty to negotiate the sale of bonds, and to make recommendations to the Administrator as to the sale of bonds.

By Mr. Wiener:

Q. And I take it for that purpose you have to have some information as to the marketability of the bonds you are endeavoring to sell?

A. It is my duty to keep in touch with the situation.

Q. Now turning your attention to the Grand River Dam Authority project near Pensacola, what securities does the P. W. A. now hold that were issued by the Grand River Dam Authority?

A. The P. W. A. now holds \$11,563,000.00 par value of bonds of the Grand River Dam Authority with the coupons maturing April 1, 1940, and subsequently, and which bonds are payable solely from the revenues of the Authority.

Q. And so far as you know those are all the outstanding bonds and coupons?

A. So far as I know they are.

Q. Have you conveniently available a memorandum showing the date of the purchase of those bonds?

A. I have.

Q. Will you produce that, please. Showing you Government's Exhibit No. 7 for identification, was that made up [fol. 363] from the records under your control?

A. Yes, sir.

Mr. Wiener: Any objection to the witness testifying from the memorandum?

Mr. Dudley: Not at all.

Q. Now with that memorandum, Government's Exhibit No. 7, before you, will you state to the court the purchases of Grand River Dam Authority bonds made by the P. W. A., giving the dates made and the amounts purchased on each date?

A. On May 23, 1939, \$2,000,000.00 par value; on July 12, 1939, \$2,000,000.00 par value; on August 18, 1939, \$3,000,000.00 par value; on October 18, 1939, \$3,000,000.00 par value; on January 15, 1940, \$1,563,000.00 par value. Total aggregate amount \$11,563,000.00.

Q. With coupons?

A. With coupons.

Q. Now does the United States now own and hold those bonds and coupons?

A. Yes sir, except the coupons that have matured and been paid on the bonds purchased prior to October 1, 1939, which were paid.

Q. But my question is, on the outstanding and non-matured bonds and coupons does the United States own them all?

A. All of these.

The Court (Judge Williams): Now the coupons were paid out of the grant?

A. They were paid out of the construction fund on October 1, 1939, in accordance with the terms of the indenture.

The Court (Judge Williams): The construction funds had a grant in it of how much, \$9,000,000.00?

A. There was a grant. The grant allotment was \$8,437,000.00. That has not all been disbursed.

The Court (Judge Williams): You say that has not all yet been disbursed?

A. Not all of it.

By Mr. Wiener:

Q. Will you give the disbursement of the grant, and the dates, please, and then when you finish that state how much remains to be disbursed of the grant?

A. On January 1, 1938, \$65,000.00.

The Court (Judge Williams): Now was that a disbursement of the grant?

A. That was the disbursement.

The Court (Judge Williams): Give the amount of the grant?

A. The total amount of the grant which the Public Works Administration agreed to pay was \$8,437,000.00.

The Court (Judge Williams): How much have they paid?

A. They have paid in all \$6,562,500.00, leaving unpaid \$1,874,500.00.

By Mr. Wiener:

Q. Now will you state the payments that have been made, the dates?

The Court (Judge Williams): Now are you calling for the disbursement out of the grant?

Mr. Wiener: Yes sir.

A. January 8, 1938, \$65,000.00; February 23, 1938, \$226, [fol. 365] 000.00; May 11, 1938, \$350,000.00; September 2, 1938, \$1,964,000.00; April 13, 1939, \$207,000.00; April 13, 1939, another payment, \$793,000.00; February 15, 1940, \$1,082,500.00; March 8, 1940, \$1,875,000.00.

Q. In general what are the conditions of the payment of the remaining portion of the grant allotment?

A. In general that would be normally payable upon completion of the project.

Q. Now do you know whether any other agency other than the P. W. A. acting for the Federal Government, has advanced any money toward the construction of this project?

A. I don't know.

Mr. Wiener: I think it will be conceded, wont it Mr. Cobb, that neither the State of Oklahoma nor its sub-divisions have advanced any money toward the construction of this project?

Mr. Cobb: So far as I know the State and its sub-divisions have not.

Mr. Davidson: There was about \$5,000.00, Planning and Resource Board. Oklahoma Planning and Resource Board.

The Court (Judge Williams): What was that contracted for?

Mr. Davidson: For preliminary expenses, before we got the grant loan, and since that time there has been nothing.



By Mr. Wiener:

Q. Now Mr. Thoron, in your opinion what would be the effect of the marketability of these Grand River Dam Authority bonds if the Grand River Dam were damaged?

[fol. 366] Mr. Dudley: We object as incompetent, irrelevant and immaterial, and no proper foundation laid for that question.

Mr. Wiener: As to the foundation I agree I haven't yet given the engineering foundation.

The Court (Judge Williams): This is not before a jury. Overruled.

Mr. Dudley: Exceptions.

The Court (Judge Williams): We assume you will introduce engineering experts to show what the effect would be?

Mr. Wiener: Yes, Your Honor.

The Court (Judge Williams): And on that theory on counsel's statement we will overrule the objection.

Mr. Wiener: Yes, Your Honor, I expect to connect it up.

A. If the dam were damaged to the extent of requiring substantial repairs it would make the bonds unmarketable in the meantime.

By Mr. Wiener:

Q. And will you explain the reasons for that opinion?

A. The bonds are payable solely from the revenues of the project, which consist primarily of the sale of electric energy. Electric energy could not be sold unless the dam is in condition to hold back the water, and supply it, pass the water through the turbines to generate the electric energy. Therefore, no prudent buyer would wish bonds where there was doubt as to the possibility of generating the energy which would produce the revenue.

Q. What in your opinion would be the effect on the marketability of these Grand River Dam Authority bonds held by P. W. A. if there was a delay in the closing of the [fol. 367] dam, or a delay in the accumulation of the power pool?

A. Until the power pool is accumulated there can be no revenue derived, and the bonds become unmarketable.

Q. And I suppose,—Will you define the power pool?

A. The power pool is the portion of water held back in the reservoir, which must rise to the level of the penstocks,

which passes it to the turbines before any power can be generated.

Q. What in your opinion would be the effect on the marketability of these Grand River Dam Authority bonds held by the Government of any interference with the project?

A. I think it would be very serious. The marketability of revenue bonds depends in large measure on confidence of the buyer in the ability of the owner of the property to conduct his business in an orderly and business like manner without outside interference.

Mr. Wiener: Cross examine.

Mr. Dudley: No questions.

The Court (Judge Williams): Then let the record show no cross examination, and the effect of it they waive cross examination.

(Witness excused.)

Mr. Wiener: For the convenience of the court I should like to offer in evidence the document marked Government's Exhibit No: 7 for identification.

[fol. 368] The Court (Judge Williams): Now is that the document from which he testified?

Mr. Wiener: Yes, Your Honor.

The Court (Judge Williams): Now that will not be permitted in evidence, but it will be permitted to be introduced for the convenience of the court in considering the evidence introduced by the witness.

Mr. Wiener: Yes, Your Honor, and I offer it only for that purpose.

C. H. MULLENDORE, called as a witness on behalf of the complainant, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct examination.

By Mr. Wiener:

Q. Mr. Mullendore, will you please state your name, residence and occupation?

A. C. H. Mullendore. I live at Miami, Oklahoma. I am Cashier and Trust Officer for the First National Bank of Miami.

Q. Now the First National Bank of Miami is a defendant in this suit?

A. Yes sir.

Q. And it is also Trustee under that indenture of trust, Government's Exhibit No. 5, dated 1st of April, 1938, with the Grand River Dam Authority?

[fol. 369] A. Yes sir.

Q. Now you have heard Mr. Thoron testify to the issuance by that Authority to the extent of \$11,563,000.00 worth of bonds, have you not?

A. Yes sir.

The Court (Judge Williams): When did he testify to that? In the affidavit?

Mr. Wiener: No, Mr. Thoron.

The Court (Judge Williams): Very well.

Q. And those \$11,563,000.00 worth of bonds and coupons were authenticated by the First National Bank of Miami as trustee?

A. Yes sir.

Q. Other than those \$11,563,000.00 worth of bonds have there been any Grand River Dam Authority bonds authenticated by the First National Bank of Miami as trustee?

A. No sir.

Mr. Wiener: No further questions.

The Court (Judge Williams): Any questions?

Mr. Dudley: No, Your Honor.

The Court (Judge Williams): Show cross examination waived, and the witness may stand aside.

(Witness excused.)

Mr. Wiener: Now, if Your Honors please, there was introduced this morning as Government's Exhibit No. 1 the proclamation declaring martial law. I would like to offer [fol. 370] as Government's exhibit next in order a map showing the dam site, showing the projected flooded area, and showing included in a red square the military area defined in the proclamation. I will offer that subject to correction, but I believe it to be accurate.

(Thereupon the document referred to by counsel was marked by the Reporter as Government's Exhibit No. 8.)

Mr. Dudley: If the court please, we object to this offer, no proper foundation laid for its introduction. We don't

know who made it, and under whose authority it was made, and we haven't had time to examine it.

The Court (Judge Williams): Let the offer stand as made, and you can have the engineer that made it, you will put him on the witness stand and we will pass on his objection after he has testified.

WALTER PANTER, called as a witness on behalf of the complainant, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct examination.

By Mr. Wiener:

Q. Mr. Panter, state your name, residence and occupation?

A. Walter Panter, Sheriff of Mayes County. Live at Pryor, Oklahoma.

Q. How long have you been Sheriff of Mayes County?

A. Since January, 1937.

[fol. 371] Q. Now during the month of March, 1940, that is this month, and prior to the arrival of the National Guard at the Grand River Dam site, was there any insurrection against the organized government in that county, Mayes County?

A. No.

Mr. Dudley: We object to that question in that form because there is nothing in the proclamation declaring martial law showing it is based upon any such proposition.

Q. (Question read by the Reporter.)

The Court (Judge Williams): Now he has asked him if he knows the date when the National Guard arrived at the dam site.

By Mr. Wiener:

Q. Do you know when the National Guard first arrived at the dam site?

A. I believe it was on the 13th.

The Court (Judge Williams): That is your recollection?

A. Yes sir.



The Court (Judge Williams): Now read the question as propounded, and the court overrules it.

Q. (Question read by the Reporter.)

A. No sir.

The Court (Judge Williams): Any obstruction against organized government?

A. No sir.

The Court (Judge Williams): Was the Sheriff's posse appealed to in any way to preserve order and peace around the dam site?

[fol. 372] A. No sir.

By Mr. Wiener:

Q. Were you or any of your subordinates interfered with in your duties of enforcing the law in Mayes County?

A. No sir.

Mr. Dudley: We make the same objection to that question; it is incompetent, irrelevant and immaterial. The language of the proclamation is not based upon riot, insurrection, anything of that kind, but based upon certain specific things, and this is wholly immaterial.

The Court (Judge Williams): Well, it might be surplus, but it won't hurt the record. It is overruled, and he may ask it.

Mr. Dudley: Exceptions.

Mr. Wiener: We are proving the allegations of our complaint. I want to argue that was not even a good proclamation of martial law.

Mr. Dudley: We don't think there was any martial law.

The Court (Judge Williams): Well, an attempt might be enjoined. Go ahead.

By Mr. Wiener:

Q. Now during the month of March, 1940, and prior to the arrival of the National Guard, were you and your subordinates enforcing order and law in Mayes County?

A. Yes sir.

Q. Preserving the order there?

A. Yes sir.

Q. Enforcing the law?

A. Yes sir.

Q. Were the courts that were sitting in Mayes County open?

[fol. 373] Mr. Dudley: If the court please, we want our objection to go to this line of questions.

The Court (Judge Williams): I will let you ask if they were open and functioning.

By Mr. Wiener:

Q. Were the courts of Mayes County open and functioning prior to March 13, 1940?

Mr. Dudley: We object to that as incompetent and immaterial.

The Court (Judge Williams): Overruled.

A. Yes sir.

Q. Was the execution of their process interfered with?

Mr. Dudley: We object to that for the reason it is incompetent, irrelevant and immaterial, and not within the proclamation, and for the further reason it is calling for a conclusion of the witness.

The Court (Judge Williams): The record shows the objection overruled, and the witness answered no. Shook his head. The Reporter couldn't see it.

A. No.

By Mr. Wiener:

Q. Now Sheriff are you the official charged with the execution of the process of the courts of Mayes County?

A. Yes sir.

Mr. Wiener: That is all.

[fol. 374] Cross-examination.

By Mr. Dudley:

Q. Now as Sheriff do you understand it is your duty to protect the roads and highways of your county against inundation and overflow?

A. Well, I wouldn't know about that.

Q. You didn't know about that? Well, did you know anything about the highways and roads of your county about to be inundated along about the 13th of March, 1940?

A. No sir.

Q. By this Dam Authority?

The Court (Judge Kennamer): Let me ask him this question. Anybody call on you to open the roads?

A. No sir.

The Court (Judge Williams): You understand it is your duty to prevent people from closing the roads unless they were authorized by the County Commissioners, or some superior State authority?

A. Yes sir.

The Court (Judge Williams): You had no complaint in that respect prior to that time?

[fol. 375] A. No sir.

By Mr. Dudley:

Q. Well, did you know or get any information from any source that this Dam Authority was about to inundate some regular used highways of your county?

A. No sir.

Q. You don't know anything about it?

A. Only what I read in the papers, is all.

Mr. Dudley: That is all.

Redirect examination.

By Mr. Wiener:

Q. Did any Executive Officers of the State of Oklahoma call upon you to preserve, with the aid of the process of the courts of Mayes County, from the inundation by the Authority?

A. No sir.

Mr. Wiener: That is all.

(Witness excused.)

I. N. TOWNE, called as a witness on behalf of the complainant, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

## Direct examination.

By Mr. Wiener:

Q. Mr. Towne, state your name, residence and occupation?  
[fol. 376] A. I. N. Towne; residence at the dam site Pensacola Dam; occupation construction superintendent.

Q. For whom?

A. Massman Construction Company.

Q. And the Massman Construction Company are the general contractors that are charged with the construction of the Grand River Dam?

A. They are.

The Court (Judge Williams): Is the construction being done by them?

A. The construction is under way by the Massman Construction Company.

The Court (Judge Williams): You are acting for them?

A. Yes sir.

By Mr. Wiener:

Q. Where in relation to the dam is your office?

A. It is south about four hundred feet from the approximate center of the dam.

Q. Is that below the face of the dam, or above it?

A. Down stream from the face of the dam.

Q. And where is your residence during the time you are acting as Construction Superintendent?

A. My residence during that time is about three hundred feet almost directly east of the office.

Q. Is that on the cliff or bluff overlooking the project?

A. No sir, it is in the valley toward the town of Disney.

The Court (Judge Williams): You mean south or north of the dam?

[fol. 377] A. South of the dam.

Q. As part of your duties as General Superintendent are you familiar with the conditions surrounding the dam site?

A. I am.

Q. During the month of March, 1940, prior to the evening of March 13th, was there any insurrection against the constituted authorities in the vicinity of the dam site?

The Court (Judge Williams): Or against anybody?

A. Not to my knowledge.



The Court (Judge Williams): Would you have known if there had been?

A. I certainly would, yes sir.

Q. Now tell the court, please, what happened on the night of—strike that out. Who called on you at the dam site on the night of March 13th?

A. I was called on between 8 and 9 o'clock by—

The Court (Judge Williams): In the evening?

A. 8 and 9 P. M. by Major Parris, Captain Bliss, and Lieutenant Shields of the Oklahoma National Guard.

Q. Were they in uniform or civilian clothes?

A. In uniform.

Q. Did they exhibit any documents to you?

A. After introducing himself—

Q. And before you relate the conversation, where was it and who was there?

A. They called upon me—

[fol. 378] The Court (Judge Williams): You said after introducing himself. Who introduced himself?

A. Major Parris.

Q. Who was present at the conversation, and where was it held?

A. The conversation was held in my office at the dam site. Present were myself, Major Parris, Captain Bliss, and Lieutenant Shields, and several newspaper reporters, among them Bob Maxwell, I think his name is, of the Tulsa World, and Mr. McGann of Pryor, and others I don't remember.

The Court (Judge Williams): How many newspaper reporters did they bring along?

A. I can't say Major Parris brought any, along.

The Court (Judge Williams): How many accompanied him then?

A. I can't say whether they accompanied the Major or not.

The Court (Judge Williams): How many were there then?

A. Somewhere about 8 or 10.

By Mr. Wiener:

Q. What, if anything, was said by Major Parris to you after he introduced himself?

A. He handed me a telegram addressed to him and signed by General Ledbetter of the Oklahoma National Guard.

Q. Did you keep that telegram?

A. I did not.

The Court (Judge Williams): You mean he exhibited it to you?

A. He allowed me to read it, and I handed it back to him.

[fol. 379] Q. Now what did he say when he exhibited that telegram?

A. He told me that he had come to the dam site to take charge under the proclamation of martial law signed that day by the Governor of Oklahoma.

Q. Did he purport to give you any orders?

A. He told me that his instructions were to see that the regular flow of the Grand River was not interfered with in any way.

Q. Were those oral or written instructions?

A. Those were oral.

Q. Did he give you any written orders?

A. He gave me no written orders.

The Court (Judge Williams): What else did he say, if anything?

A. When Major Parris told me why he was there, I called his attention to the fact that the river was already diverted.

The Court (Judge Williams): What do you mean by diverted?

A. That we had dammed the river and its natural flow was changed. He said he didn't understand that, and I offered to take him to the actual river site at the dam, or dam site at the river, and show him the situation.

The Court (Judge Williams): Well, did you do that?

A. I did that.

Q. And where did you take him?

A. I took Major Parris to the dam site, the site of arches 6, 7 and 8 on the Grand River.

[fol. 380] Q. Down stream or up stream?

A. Down stream.

Q. Showing you Government's Exhibit No. 9, I will ask you to identify that?

A. I place my pencil on arch 6.

Q. Identify the picture first.

The Court (Judge Williams): Get some tacks and have that tacked up.

A. This is evidently an aerial photograph of the buttress section of the Pensacola Dam.

Q. And showing you Government's Exhibit No. 10, will you identify that, and in identifying it state whether it is up stream or down stream view?

A. This is evidently an aerial photograph showing a view taken from down stream of a portion of the Pensacola Dam.

Mr. Weiner: I offer these in evidence.

The Court (Judge Williams): Any objection?

Mr. Cobb: No objection.

Mr. Weiner: I think this probably will give it about as conveniently as possible.

Q. Now will you illustrate on these exhibits, Government's Exhibits 9 and 10, by pointing, and show the court just where you took Major Parris?

[fol. 381] A. On Exhibit 9 Massman Construction Company's office is where I place my pencil.

The Court (Judge Williams): Put a little cross mark with the pencil there.

Q. I suppose we had better mark these a, b and c. Put an a at the Massman Construction Company, a red a?

A. I met Major Parris there and we got into an automobile and proceeded approximately as I trace my pencil. Shall I trace a red line.

The Court (Judge Williams): Yes.

A. Parked our car on the river bank.

The Court (Judge Williams): Make an X there.

A. That is X. And proceeded over a dotted red line out on to a trestle over Grand River down stream from the dam to the approximate location, to the location of arches 6, 7 and 8.

Q. Will you please write 6, 7 and 8 at the location of those arches. Now then when you got down to arches 6, 7 and 8 what happened there? What was said? What was done?

A. I showed Major Parris these openings 8 feet by 10 feet at the bottom of the Grand River Dam in arches 7 and 8, and explained to him that the river was at that time flowing

through those six openings. I then took him, or accompanied him, to the down stream site of arch 6 where we had just completed a concrete pour on arch 6. I pointed [fol. 382] this fact out to Major Parris; told him we would like to finish the pour. In other words, prepare the concrete for a succeeding pour of concrete, and explained to him that it would raise the height of the arch to finish it. He consented to that. I then asked Major Parris if he had any further orders. He told me, excuse me, to go back, I told Major Parris that we could make no further concrete pour on arch 6 within 48 to 60 hours. He then told me that he didn't wish to stop any work at that time; that we were to make no further pours on arch 6, and that we were not to close the 6 openings I have previously referred to; that his orders with reference to arch 6 were tentative only, and await further orders from him on the following day from the Adjutant General or the Governor.

Q. Now on that night, the night of March 13th, were any further orders given you by Major Parris or any of the officers with him?

A. They were not.

Q. Now where to your knowledge, where did Major Parris and his associates stay that night?

A. At my invitation Major Parris and his two accompanying officers stayed in my bunkhouse.

Q. So they didn't have to sleep in pup tents that night?

A. They did not.

Q. What happened with reference to any visits from National Guard officers, or orders from them, the next day, the 14th?

A. Between 8 and 9 o'clock the 14th, General Ledbetter—

The Court (Judge Williams): In the morning or evening? [fol. 383] A. Between 8 and 9 o'clock A. M. of the 14th General Ledbetter, Colonel Cox, and other officers of the National Guard arrived by automobile, came into my office and asked to see Major Parris. I told them Major Parris having been up most of the night was still in bed. They then visited Major Parris in the bunk house.

Q. After that visit were any further orders give to you by the National Guard officers, General Ledbetter, or any of his subordinates?

A. They were not.



Q. Did any other members of the Oklahoma National Guard arrive at the dam site that morning?

A. Shortly after the arrival of General Ledbetter.

Q. Was the General in uniform?

A. The General was in uniform, and his aids were in uniform.

The Court (Judge Williams): You mean all who accompanied him in the automobile, including the chauffeur, were in uniform?

A. They were.

The Court (Judge Williams): Did they have their sabers and implements of an officer?

A. No officer carried a saber to my knowledge.

The Court (Judge Williams): Any of them have six shooters?

A. They were not visible if they did. Shortly after the arrival of General Ledbetter about five truck loads of soldiers arrived.

The Court (Judge Williams): Were they armed and in uniform?

A. They were in uniform. They didn't get out of the [fol. 384] trucks. I couldn't tell you whether they had arms with them; or not.

The Court (Judge Williams): What kind of trucks?

A. Army trucks.

By Mr. Weiner:

Q. What did those six truck loads of soldiers do?

A. They pulled up in front of the Massman office, and an officer got out of the trucks, reported either to Major Parris or General Ledbetter, and after about an hour all the trucks departed, and I don't believe that any private soldiers got out of the trucks.

The Court (Judge Williams): In the meantime what were you and your force doing that morning?

A. The work was proceeding as usual.

The Court (Judge Williams): On the pouring on 5?

A. We were not pouring on arch 6, and we didn't proceed to close the openings that I mentioned; otherwise the job went ahead as usual.

The Court (Judge Williams): And you told them that you couldn't be in position to close it in how many days?

A. I told them it didn't appear at that time that we could close the six openings within a week or ten days.

By Mr. Weiner:

Q. After these six truck loads of soldiers left who of the military personnel remained at the dam site?

A. General Ledbetter, and his staff remained there throughout the day, and left late that afternoon.

Q. Did General Ledbetter and his staff, other than the officers who had come there the night before, give you any [fol. 385] orders, or further orders, with reference to either closing them or not closing the openings; or pouring or not pouring arch 6?

A. They did not.

The Court (Judge Williams): Did they leave anybody there that night?

A. Yes sir, Major Parris, Captain Bliss, and Lieutenant Shields remained.

Q. How long did they remain there?

A. They remained three or four days. The exact date they left I can't tell you. There were two officers on duty there until last Saturday. (March 23, 1940.)

The Court (Judge Williams): What two officers?

A. Lieutenant Harrison and Lieutenant McCain.

Q. Now after the departure of General Ledbetter did either Major Parris, or Captain Bliss, or Lieutenant Shields—

The Court (Judge Williams): Now last Saturday, what date was that?

A. Last Saturday was the 23rd of March.

Q. So the Saturday before would have been the 16th?

The Court (Judge Williams): I want the record to show the date.

Q. These officers remained there until March 23rd?

A. That is Lieutenants McCain and Harrison were on duty there until the 23rd.

The Court (Judge Williams): Wearing their uniforms?

A. In uniform.

[fol. 386] Q. From the time that General Ledbetter and his staff left the dam site until Major Parris, Captain Bliss and Lieutenant Shields were relieved, did any member of the Oklahoma National Guard give you any further orders with reference to either closing or not closing the openings, and with reference to pouring or not pouring arch No. 6?

A. They did not.

Q. Written or oral?

A. Either written or oral.

Q. Did Lieutenants McCain and Harrison give you any orders?

A. They did not.

Q. Now after you received these orders from Major Parris the night of March 13th, and until you learned of the restraining order issued in the Ottawa County suit, did you cause to be taken any steps toward closing the openings, or towards raising arch 6?

A. We did not.

Q. Did you finally, (When was that restraining order served on you, or when did you have notice of it?

A. I had notice of it.

The Court (Judge Williams): Now you refer to the State court?

A. The State court in Ottawa County?

A. I had notice of the restraining order late in the afternoon of the 14th of March.

The Court (Judge Williams): But it wasn't by official [fol. 387] service?

A. I haven't been served officially, no sir.

The Court (Judge Williams): You just heard about it?

A. Yes sir.

The Court (Judge Williams): Were you ever served?

A. I was never served.

By Mr Wiener:

Q. Between the time that you heard of the restraining order issued by the State court, and the time that you heard of the restraining order issued in the present suit by His Honor, Judge Kennamer, did the Massman Construction Company under your superintendency take any steps towards closing the openings or raising arch 6?

A. We took no steps toward closing the openings. We made, I believe, three lifts of about 11 feet each on arch 6.

Q. And what was the maximum height you obtained on arch 6 by those three lifts.

A. We arrived at approximately elevation 700.

Q. But you didn't go above 700?

A. That is right.

The Court (Judge Williams): How far would you have gone to close it?

A. We would have had to have gone I believe to 755, about 55 feet higher than we are.

The Court (Judge Williams): And how many days do you have under the contract to close it without violating the contract of Massman Construction Company with the Authority?

[fol. 388] A. We have until March 29th, I believe.

The Court (Judge Williams): And how much are the penalties each day that you fail to close it?

A. The penalty stated in the contract is \$500.00 per day, plus the cost of engineering expenses which I imagine amounts to \$250.00 more.

The Court (Judge Williams): Which you judge, you mean, not imagine.

A. Which I judge, yes sir.

Mr. Wiener: I have no further questions.

Cross-examination.

By Mr. Cobb:

Q. Mr. Towne, on March 13th was the dam in the final period of completion?

A. Yes sir.

Q. Is arch 6 the last arch to be constructed that will close the dam?

A. Arch 6 will probably be the last arch to be finished.

Q. Now as I understand it arch 6 is say a middle arch, and you construct the two side arches along together with arch 6, is that correct?

A. That is a necessary construction method, yes sir.

The Court (Judge Williams): What do you mean by side arch, 5?

A. 5 and 7.



The Court (Judge Williams): 7 is on the east side?  
[fol. 389] A. That is correct.

The Court (Judge Williams): And 5 on the west side?  
A. Yes sir.

The Court (Judge Williams): Has arch 7 been completed?

A. Not yet.

The Court (Judge Williams): And arch 5 been completed?

A. Not at this time, no sir.

By Mr. Cobb:

Q. It is my understanding, Mr. Towne, on the evening of March 13th that you had completed making a pour on arch 6, is that correct?

A. Yes sir.

Q. And that you don't make another pour then for some 48 to 60 hours?

A. That is right.

Q. Now after the militiamen arrived, Major Parris, Captain Bliss—

The Court (Judge Williams): You should call them officers.

Mr. Cobb: They are part of the militia.

Q. After Major Parris, Captain Bliss and Lieutenant Shields arrived, did they, or any one acting under them, interfere in any way with the pouring of concrete, or the going on of your work out there?

A. No sir.

Q. I believe the court asked you this question. Did you see at any time any officer or any enlisted man of the National Guard carrying any kind of a weapon?

A. I did not.

[fol. 390] Q. At the time Major Parris and Captain Bliss and Lieutenant Shields arrived out there, was it your intention then in any short period of time to close any of the six openings at the bottom of the dam?

A. We had no definite plan to do so at that time.

Q. And did they interfere with any of your work toward closing any of those openings at any time?

A. They did not.

Q. Now did the work of the completion of this arch 6 and these openings, was that stopped at any time by you or Massman Construction Company on account of the militia being out there, or on account of this State court order?

A. No actual stoppage of work.

Q. No actual stoppage of work?

A. No sir.

Q. Mr. Towne, what was the demeanor of Major Parris and Captain Bliss and Lieutenant Shields, General Ledbetter, and any of the men that were of the National Guard that were out there?

A. Courteous and reasonable.

Q. Courteous and reasonable at all times?

The Court (Judge Williams): Officers are supposed to be. He is supposed to be a gentleman, an officer is.

Q. They didn't go around trying to brow beat you, and tell you you had to do this and that? They were really trying to observe and find out exactly what time the flow of [fol. 391] the river would be interfered with, is that correct?

The Court (Judge Williams): Now what he said. There ain't any objection to that. That is a conclusion.

Q. What did they tell you they were there for?

A. Major Parris, who was the only one who gave me any instructions at any time, told me he was there to see that the regular flow of the Grand River was not obstructed or interfered with in any way.

Q. And you explained to him at that time the regular flow was going through the six openings at the foot of the dam?

A. That is right.

Q. Did you tell him when you intended to close them?

A. I didn't tell him when, because we had no definite time then.

Q. Did those six openings carry off the flow of the river?

A. They did at that time, yes sir.

Q. Was the river backing up any at all at that time?

A. No sir.

Q. Have you since then closed those six openings?

A. We have closed up all six openings since then.

Q. You closed all six openings?

A. Yes sir.

Q. Do you know on what date?

The Court (Judge Williams): When did you do that? When did you close them, what day?

A. We closed them, I believe, the night of March 22nd. [fol. 392] I would like to verify that.

The Court (Judge Williams): How come you to close them then?

A. Our general plan.

The Court (Judge Williams): Well, did you have any information about this injunction being issued in this court?

A. I knew of the injunction in this court, yes sir.

The Court (Judge Williams): And it wasn't done until you had information as to this restraining order issued by this court?

A. It wasn't done until after that restraining order was issued, but not on account of the fact it had been issued. In other words, we were not taking advantage of that fact. Our construction program had arrived at the point where all of our arches were to elevation 700, or above, at that time. Some weeks or months ago we had planned at that time to close the openings when all the levels reach 700, or above.

The Court (Judge Williams): Now had these National Guard officers been withdrawn when you did that?

A. No sir.

The Court (Judge Williams): You raised—

A. We raised arch 6 to 700 while the officers were there.

The Court (Judge Williams): They made no statement relative to that?

A. They made no objection.

The Court (Judge Williams): Well, did they make any [fol. 393] statement whatever relative thereto?

A. No sir, I don't believe that any of the officers—

The Court (Judge Williams): Did anybody on the part of the National Guard make any statement relative thereto other than what you have testified about?

A. That is right.

The Court (Judge Williams): Proceed.

By Mr. Cobb:

Q. Did the National Guard in any way delay you in closing the six openings?

A. No sir.

Q. Or were those openings closed then at the point of time—

A. As we planned to do it, yes sir.

Q. As you planned to do it?

A. Yes sir.

Q. Isn't there one opening still open?

A. No, all six are closed.

The Court (Judge Williams): To what height are they closed?

A. They are all very low, at the bottom of the dam, the openings that I was speaking of.

The Court (Judge Williams): How close did you close them up?

A. They are fully closed.

The Court (Judge Williams): 755 feet now?

A. No, they are about 615 elevation.

[fol. 394] The Court (Judge Williams): And the full elevation to be closed is 755?

A. 755, yes sir.

The Court (Judge Kennamer): Tell me this, you say Major Parris, said he didn't interfere with you. Were you going on, were you going to ignore his instructions?

A. No sir.

The Court (Judge Kennamer): What were you going to do about it?

A. We were not going to do anything; couldn't do anything.

The Court (Judge Williams): You mean the closing doesn't interfere with the flow of the river?

A. The closing now made does interfere with the flow of the river.

The Court (Judge Williams): When did you make the closing that does interfere with it?

A. The night of March 22nd or 23rd.



The Court (Judge Murrah): That was after the restraining order by the Federal Court?

A. That is right.

The Court (Judge Murrah): And you did it under that restraining order?

A. That is right.

By Mr. Cobb:

Q. Isn't it a fact, Mr. Towne, you stated a few minutes ago that Major Parris told you to go ahead and make your pour, go ahead and work just as usual?

A. Which pour do you mean?

[fol. 395] Q. When he arrived on March 13th he found that the ordinary flow of the river was going through the six openings?

A. Yes sir.

Q. He told you to go on and perform your work as usual, make your next pour, did he not?

A. No, he told me to make no further pours on arch 6 at all. He had definite instructions from the Governor or the Adjutant General and he would give them to me the following day.

Q. And on the following day what did he tell you?

A. He gave me no instructions the next day.

Q. He didn't tell you to go ahead and make the next pour?

A. No sir.

Q. Did you go ahead and make the next pour?

A. We did after the State court had given us permission to go as high as 700 elevation.

Q. And at that time he was there and knew you were going to make that pour, did he not?

A. Yes sir, he did.

Q. Did he talk to you about it?

A. He made no reference to it.

Q. He was there and knew you were making the pour?

A. He did.

Q. Didn't use any force or threats to prevent you from making the pour?

A. He did not.

[fol. 396] Q. At this time, as I understand it, the six openings at the foot or bottom of the dam are closed?

The Court (Judge Williams): Yes, he has testified to that.

A. They are closed.

Q. Isn't any part of the waters of Grand River now flowing through or past the dam?

A. Yes sir.

Q. How is that water getting through?

A. There is a very small amount of water flowing through one of the openings to accommodate the people below.

Q. Is that a temporary opening?

A. Yes sir. I made a mistake when I told you they were all closed. We raised one yesterday because of the fact we have to keep some water in Grand River all the time.

Q. Has the water begun to back up and fill the reservoir?

A. It has, yes sir.

Q. Is the pressure from the amount of water of the reservoir forcing out of that one opening the ordinary flow of the river?

A. No sir.

Q. Part of the waters then are backing up in the reservoir?

A. Yes sir.

Q. Do you remember at the time that Major Parris left that he showed you the diary that he had kept?

A. Major Parris gave me a typewritten copy of his diary.

Q. And at that time did you tell Major Parris that his diary of his actions there was correct?

[fol. 397] A. Yes sir.

Q. One further question, Mr. Towne, did the Massman Construction Company refrain from doing any work in connection with the completion of this dam on account of any order, or on account of the presence of any National Guardsmen, or did the work go on just as usual although they were present?

A. There was no actual stoppage of work, but it was a hindrance to our plans on account of the fact that we had a restraining order from the State court to go no higher than elevation 700 with arch 6.

Q. That was on account of the State order?

A. That is right.

Q. I didn't ask you about that. I asked you if you refrained from doing any work on account of the presence of the National Guard being there?

A. No sir.

Mr. Cobb: That is all.

Mr. Wheatley: If the court please, may I ask the witness a few questions?

The Court (Judge Williams): Yes.

### Examination.

By Mr. Wheatley:

Q. Mr. Towne, the three openings under arch 7, and the three under arch 8, what was your plan for closing those openings? That is, were they temporary?

[fol. 398] A. All six of them are temporary, or were temporary openings.

Q. Now what manner of gates are used for the closing of the five openings?

A. Five of the openings are closed with timber gates which drop into place. The sixth opening is closed with a cast iron sluice gate.

Q. Is that gate made so it can be opened and closed?

A. At will, yes sir.

Q. Does it operate on a motor, or by power of any kind?

A. It operates on a motor, but can be operated by hand.

Q. Now that sluice gate—How wide is arch 8 from buttress to buttress?

A. About 64 feet.

Q. Now where arch 8 goes down and sets into the bottom of the river on the rock is made like a horse hoof. Do you refer to that sometimes as the Hoof section of the arch?

A. Yes sir.

Q. In that hoof section you find these three gates in arch 8, do you not?

A. That is so.

Q. And they are 8 by 10?

A. 8 by 10.

Q. The middle of those gates is where your sole sluice gate is proper?

A. Yes sir.

Q. Now the number two gates under arch 8, and the three gates under arch 7 are made to be closed by timber gates?

[fol. 399] A. That is right.

Q. Now after those timber gates are closed are they made to be reopened?

A. No sir.

Q. What is the purpose of those gates?

A. The only purpose of the five timber gates we have spoken of is to close off the river and excluding water so we can finally finish the pour of concrete.

Q. So they are down here in the thread of the stream?

A. Yes sir, that is right.

Q. Now then was this dam built in such a way that these unfinished arches were to be used as spillways?

A. Not except in the most extreme emergency.

Q. Would the orders that were given you by the National Guard have interfered with your work except for the restraining order, up to this time?

A. Eventually they would have done so, yes sir.

The Court (Judge Murrah): Well, would they by this time have interfered with your work?

A. Yes sir.

The Court (Judge Murrah): And would have prevented the orderly progress of the work?

A. It would have, yes sir.

The Court (Judge Murrah): In other words, if you had followed the instructions and the orders given to you by the militia on the 13th of March, 1940, until this time, and been [461.400] subject to their orders on this date, the orderly progress of the construction of that dam would have been materially interfered with?

A. It would have without question.

Mr. Williamson: Your Honors please, just for the sake of the record we would like to object to that question and answer, and move it be stricken from the record for the reason it is purely conclusive as to what might have happened.

The Court (Judge Williams): It is overruled and exceptions saved.

The Court (Judge Murrah): The Attorney General asked him the same question.

Mr. Cobb: Yes sir, and his answer was different.

The Court (Judge Murrah): Well, I don't like that statement.

The Court (Judge Williams): This is re-direct evidence on what you brought out. If there is any new matter you want to ask a question on, you may ask him.

Mr. Cobb: I would like to ask this question.



## Recross-examination.

By Mr. Cobb:

Q. Mr. Towne, have you or the Massman Construction Company taken into consideration or calculated just what the result of closing the dam at this time will be upon the private property owners whose land will be inundated that has not been paid for?

[fol. 401] Mr. Wiener: I object to that.

The Court (Judge Williams): I sustain the objection unless they make him their witness for this purpose, and you may make him your witness for that. That is not germane to any matter that was brought out, but if you seek to ask him the question, make him your witness for that purpose.

Mr. Wiener: My objection goes further than that. My objection is, the Massman Construction Company is under a contract with the Grand River Dam Project, and it isn't material to any issue in this case as effecting the Grand River Dam Authority, or the Massman Construction Company.

Q. (Question read by the Reporter.)

Mr. Wiener: And the further objection the rights of the private property owners are not in issue here.

The Court (Judge Williams): The objection is sustained.

Mr. Cobb: All right, exceptions.

By Mr. Cobb:

Q. Mr. Towne, I will ask you whether or not you or Massman Construction Company have considered or made any calculation of any kind with reference to any public property, such as the State highways and bridges, that will be inundated by the backing up of the waters of Grand River?

Mr. Wiener: I object to that on the ground that the Authority, for whom the Massman Construction Company is contractor, is specifically authorized by Section 2(h) of the Enabling Act to flood the highways.

The Court (Judge Williams): Read the question, Mr. Reporter.

[fol. 402] Q. (Question read by the Reporter.)

The Court (Judge Williams): The objection is sustained.

Mr. Cobb: Exceptions.

Mr. Wiener: No re-direct examination.

(Witness excused.)

LOUIS A. LEDBETTER, called as a witness on behalf of the complainant, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct examination.

By Mr. Wiener:

Q. General Ledbetter, what is your name and residence?

A. Louis A. Ledbetter, Wewoka, Oklahoma.

Q. You are the Adjutant General of the National Guard of Oklahoma?

A. Adjutant General of the State of Oklahoma.

Q. And a defendant in this cause?

A. I am.

Q. What is your occupation in private life, General?

A. I am a lawyer.

[fol. 403] Q. You are here pursuant to subpoena?

A. Yes sir.

Q. Have you a copy of the subpoena with you?

A. I think I have.

Q. Just so the record will show, General, will you state your official duties in your capacity as Adjutant General of the State?

A. Well, the Adjutant General has charge of the military department of the State of Oklahoma, and is the administrative agency for the State of Oklahoma in conducting the affairs of the National Guard, and liason officer between the Governor of Oklahoma and the War Department.

Q. And through what channels will orders from the Governor to the National Guard pass?

A. In orderly process through the Adjutant General's office.

Q. Have you here in response to our subpoena originals or copies of all orders received by you from your military superiors, including the Governor as Commander in Chief,

issued pursuant to or in connection with that certain Executive proclamation issued by the Governor of Oklahoma, which is Government's Exhibit No. 1 declaring martial law at the vicinity of the dam site?

A. I have.

Q. Will you produce those orders, please.

Mr. Wiener: Let the record show the witness has handed me five papers.

The Court (Judge Williams): Now let the next one be [fol. 404] 11-a, b and so on.

Mr. Wiener: Yes, Your Honor. Second paper to be marked 11-a for identification. Let the record show these five papers have been marked Government's Exhibit No. 11, 11-a, 11-b, 11-c, and 11-d.

Q. Showing you Government's Exhibit No. 11 for identification, which is a carbon copy of a typewritten order, will you identify that, please?

A. That is a directive given me by the Governor of Oklahoma.

Q. When?

A. Subsequent to the Executive order authorizing the establishment of martial law.

Q. Was the original of which Government's Exhibit No. 11 is a carbon copy signed by the Governor?

A. No sir.

Q. So this is just a piece of paper.

The Court (Judge Williams): Who did it come from?

A. From the Governor of Oklahoma.

The Court (Judge Williams): Came from his office. Did he give it to you personally?

A. No, the Governor gave me his direction.

The Court (Judge Williams): Personally?

A. Personally.

The Court (Judge Williams): After a conference?

A. In a conference. It is a directive order, is what it is.

Q. And this directive order was not signed by him?  
[fol. 405] A. No sir.

The Court (Judge Williams): Now repeat that so we can know what it is.

Mr. Wiener: Government's Exhibit No. 11 is a carbon copy of an unsigned piece of copy paper reading:

"The Adjutant General is directed to place in effect the Executive Order declaring martial law at the Grand River dam, if it is found necessary so to do to protect and prevent damage to the property of the State of Oklahoma, including roads and bridges, but in no case will he use unnecessary force to interfere with any public operations or the construction of the dam, and will in his discretion cause to be executed the order declaring martial law only to the extent that it may be necessary to protect public property of the State and to prevent its destruction or damage."

Q. That order is directive, and is not dated?

A. No.

The Court (Judge Williams): Was it given to you before Major Parris, Captain Bliss and Lieutenant Shields came to the dam?

A. It was.

Q. Now was the Executive proclamation of martial law ever modified?

The Court (Judge Williams): This was signed on the 13th?

Mr. Wiener: Yes sir.

Q. Was Government's Exhibit No. 1, Executive proclamation 406] tion of martial law of the 13th ever publicly modified in the terms of Government's Exhibit No. 11?

A. Not that I know of.

Mr. Wiener: I offer this in evidence.

Mr. Dudley: No objection.

The Court (Judge Williams): It is introduced, admitted, and considered as read. Now read Exhibit 11-b.

Mr. Wiener: I want to arrange these chronologically, Your Honor.

The Court (Judge Williams): Yes.

Mr. Wiener: Government's Exhibit No. 11-c is simply a copy of the proclamation, Government's Exhibit No. 1.

The Court (Judge Williams): That is a copy of the martial law?

A. A copy of the proclamation.

Mr. Wiener: This is the one, he the said Adjutant General will stop all work, and reading them chronologically, 11-b is special order No. 39:



"Pursuant to executive order of the Governor dated March 13, 1940, declaring martial law in the area occupied by the Grand River Dam in Mayes County, Oklahoma, the following officers and units of the Oklahoma National Guard are placed on active duty, effective this date, and directed to proceed from their respective home stations to the vicinity of the Grand River Dam in Mayes County, Oklahoma, for the purpose of enforcing said executive order and establishing martial law:

[fol 407] Col. Philip S. Donnell, 179th Infantry, Stillwater.

Maj. Harry B. Parris, 180th Infantry, Eufaula.

Det. Serv. Co., 180th Inf., Tulsa.

Company M, 180th Infantry, Tahlequah."

A. Yes sir.

The Court (Judge Williams): What is the date of that?

Mr. Wiener: March 13th.

The Court (Judge Williams): Now I want to find out. Was that given to you before or after this that you received, the other one, or at the same time?

A. That was the order I issued.

The Court (Judge Williams): After that conference?

A. Yes sir.

By Mr. Wiener:

Q. Government's Exhibit No. 11-a is special order No. 40, an extract from it, March 15, 1940, paragraph 3:

"The officers and enlisted men placed on duty by Special Order No. 39, these headquarters, March 13, 1940, are relieved from active duty, effective this date, with the exception of Major Harry B. Parris, Captain Benjamin Bliss, and Second Lieutenant Lem W. Shields, and will return to their home stations and revert to their former status."

A. Let me see that order just a minute.

Q. That is an extract?

A. The enlisted men referred to in that order are the drivers, who were assigned to drive trucks.

Q. If you don't mind, General, I think we will put our [fol. 408] own interpretation on the order. There is a detachment service Company 180th Infantry, those are the truck drivers?

A. Yes, and we had the service truck from Oklahoma City over there.

Q. And Company M 180th Infantry, that is one of the three machine gun companies of the regiment?

A. Yes sir.

The Court (Judge Williams): Did they have a machine gun with them?

A. Governor, I didn't inspect the arms. If they obeyed the order they brought the machine guns with them.

Q. And under your present tables of organization of the 180th Infantry, Company M is a machine gun company?

A. That is right.

Q. Exhibit II-d is as follows:—

The Court (Judge Williams): What is the date of that.

Q. March 21st. "First Lieutenant William E. Harrison, Infantry, Headquarters Detachment, Special Troops, Oklahoma City, and First Lieutenant Oran N. McCain, Headquarters Battery, 160th Field Artillery, Tulsa, are placed on active duty, effective this date, and directed to proceed from their respective home stations to the Grand River Dam, Disney, Oklahoma, for the purpose of acting as military observers at the Grand River Dam and performing such other duties as the Governor or the Adjutant General may direct."

Have they been relieved up to now, otherwise as their presence here required by subpoena?

A. No sir.

[fol. 409] Q. Now have you with you also originals or copies of all orders issued to your military subordinates pursuant to such executive proclamation of martial law?

A. Those are the only orders I issued in writing. I issued some verbal orders.

Q. Did you send a telegram to Major Parris?

A. I did.

Q. Have you a copy of that telegram?

A. I didn't keep a copy of that telegram. Major Parris has a copy of it.

Q. Have you brought with you originals or copies of all reports, logs, diaries, personally transmitted by you to your military superior, including the Governor?

A. I made no official report. I made no official report to the Governor, and I kept no diary myself.

Mr. Wiener: And that takes care of the last item of the subpoena. That is all.

The Court (Judge Murrah): Had you heretofore, that is prior to March 13, 1940, made a visit to this dam site?

The Court (Judge Williams): Reconnoitering, I suppose they may call that military term.

A. No, Governor, you are wrong in your definition.

The Court (Judge Murrah): Well, did you see the dam?

A. No, you are wrong there.

The Court (Judge Williams): Well, were you up there?  
[fol. 410] A. I was up there.

The Court (Judge Williams): What date?

A. I believe it was March 1st.

The Court (Judge Williams): Did you go there as Adjutant General then?

A. Well, I presume so.

The Court (Judge Murrah): Did you talk to the Dam authorities there?

A. No sir.

The Court (Judge Murrah): Construction authorities?

A. Not that I know of. It was Saturday evening late when I was up there.

The Court (Judge Murrah): That wasn't for the purpose of going?

A. I wanted to see the dam.

The Court (Judge Murrah): How come you to go?

A. I had read a lot in the paper about it.

The Court (Judge Williams): Well, had the Governor requested you to go?

A. Not specially.

The Court (Judge Williams): Well, in general then?

A. I anticipated he might want me to do so.

The Court (Judge Williams): How come you to know that?

A. Reading the newspapers.

The Court (Judge Williams): You get orders from him through the newspapers then?

[fol. 411] A. No sir, I don't.

The Court (Judge Williams): What did you report to them after you went back?

A. I told him that the river was running through the dam as far as I could observe.

The Court (Judge Murrah): Well, did you tell him you found out how to stop it from running?

A. No sir, I didn't tell him that.

The Court (Judge Murrah): Did you tell anybody that, or that in substance?

A. I might have facetiously said, as everybody seemed to regard it as a pet subject of alarm, I might have said something about dynamiting the dam.

The Court (Judge Murrah): I didn't mean that.

The Court (Judge Williams): I want to find out, why would people in a facetious way make statements about dynamiting that dam?

A. Well, I don't know. If you look at the papers this morning, they give quite a showing of the whole proceedings in the court yesterday.

The Court (Judge Williams): Yes, but there wasn't any court proceedings.

A. Well, courts are not the only place where humor originates.

The Court (Judge Williams): Why use humor for facetiously referring to a dam that would cost \$20,000,000.00, that was built to prevent overflows, and for irrigation, and [fol. 412] to develop electric power, why should that be facetious to consider the possibility of the dam to be dynamited, and the Adjutant General of the State, who is at the head of the National Guard, possibly facetiously comment on its dynamiting?

A. Now if that is a question addressed to me, I will answer that I don't know.

The Court (Judge Williams): Any cross-examination.

Cross-examination.

By Mr. Cobb:

Q. General Ledbetter, did you ever at any time intend to dynamite the dam?

A. Absolutely not.

The Court (Judge Williams): Well, if you had been directed by the Governor of the State through the National Guard to have dynamited it, would you have done it?

A. I probably would.

The Court (Judge Williams): Go ahead.

Q. The Governor has not given you any such direction?

A. No sir.



Q. Now this, I believe, this Exhibit No. 11, is what is called Governor's directive. Was that given to you by the Governor in writing or oral?

A. That was given to me orally.

Q. And this is the way you understood his order, and you put it down in writing?

[fol. 413] A. I took it down and made a memorandum of it at the time.

Q. And in all of your orders to your subordinates, Major Parris and the other officers of the militia, you always stayed within this directive of the Governor?

A. I did.

The Court (Judge Kennamer): General Ledbetter, a lot has been said about what you intended to do. The proclamation declairing martial — said stop the work, close it down. Now did you intend to obey that order, or was it newspaper bunk?

A. Mostly newspaper bunk.

The Court (Judge Kennamer): Is that the way they are running the State on a serious matter of property rights where \$20,000,000.00 are involved. Are they giving out statements you are going to stop a big project just for the fun of the thing?

A. You can answer that question as well as I can.

The Court (Judge Kennamer): Did you obey that order?

A. I aimed to obey the order of the Governor.

The Court (Judge Kennamer): Did you close the work down?

A. The Governor never ordered me——

The Court (Judge Kennamer): The proclamation did.

A. Well, that is your construction.

The Court (Judge Williams): Did you have that copy, Exhibit 11-c, you had that original, the original certified to. You mean you had that in your possession?

A. I never had a certified copy.

The Court (Judge Williams): Where did you receive the [fol. 414] copy, Exhibit 11-c, from?

A. From the Governor.

The Court (Judge Williams): Personally?

A. Personally.

The Court (Judge Williams): Very well. When did you receive it?

A. I believe it was on the date it was dated there.

The Court (Judge Williams): The 13th.

A. 13th.

The Court (Judge Murrah): And it says: "The said Adjutant General, will stop all work on said Grand River Dam in said zone and will permit no one to enter or pass through said zone, except only the authorized representatives of the Governor, and the agents and military forces under his command as Adjutant General of the State of Oklahoma; that the military law hereinbefore declared and promulgated in said zone shall not extend into any other portion or section of the State except that hereinbefore named." And describes Section 14, Southeast quarter of Section 14, Township 23 North, Range 21 East. That is the dam site, isn't it?

A. I believe it is.

The Court (Judge Williams): Now you went out there the next morning in person?

A. Yes sir.

The Court (Judge Williams): Took charge of the command?

A. No sir.

[fol. 415] The Court (Judge Williams): Go ahead.

By Mr. Cobb:

Q. General Ledbetter, as I understand it, the Governor issues his proclamation declaring martial law?

A. Yes sir.

Q. And that proclamation is filed in the office of the Secretary of State, is that true?

A. That is true.

Q. And then the Governor, as commander in chief of the National Guard of the State then issues his orders to you to go, and tells you what to do?

The Court (Judge Williams): You are a defendant in this court. He delivers a copy of the proclamation filed with the Secretary of State.

Mr. Cobb: I am trying to get the witness to testify what this Government's Exhibit No. 11 is.

The Court (Judge Williams): And he testified he got that approval, and he made a memorandum of it, and kept it there, and he has brought the copy here.

Mr. Cobb: Now I am asking him just what he did under the order, as Adjutant General, under order from the Gov-

ernor as commander in chief of the militia with reference to this dam.

A. The Governor vested in me discretion.

The Court (Judge Williams): Well now, how did he do it?

A. By his directive.

The Court (Judge Williams): What did he say? This [fol. 416] court is not bound by his conclusion, I will permit you to prove what the Governor told him.

A. That is the exhibit.

The Court (Judge Williams): You made a memorandum and put it in that notation what the Governor told you?

A. Yes sir.

Mr. Cobb: I would like to read it again to Your Honor.

The Court (Judge Williams): I know what it is. I don't need you to read it to me. You ask him questions.

Mr. Cobb: This Government's Exhibit No. 11 is the oral direction that the Governor as commander in chief gives to him.

The Court (Judge Williams): I will not permit you to ask that. That is only competent because it is a record in his office, and it is a memorandum he made. I will let you ask him what the Governor told him, and that afterwards he attempted to reduce that to writing. Did you do that in the presence of the Governor, or after he left?

A. I made the memorandum in the presence of the Governor.

The Court (Judge Williams): Did you read it to him afterwards?

A. Yes sir, I read it to him. I went over the directive with him.

The Court (Judge Williams): I know, but after you reduced that to writing did you read it to him?

A. I believe I did.

The Court (Judge Williams): Well, are you sure that you did?

[fol. 417] A. I am reasonably sure.

The Court (Judge Williams): Very well.

A. I was anxious to clarify my position.

The Court (Judge Williams): Very well, go ahead.

By Mr. Cobb:

Q. Now General Ledbetter, Government's Exhibit 11-e as I understand it, is a copy of the Governor's proclamation of martial law?

A. Yes sir.

Q. Did you prepare that proclamation for the Governor?

A. I did.

Q. Did you have any form of proclamation?

The Court (Judge Williams): What do you call it. Wasn't a reconnaissance. You said you had been making an inspection. What would you call it?

A. I would call it a visit.

The Court (Judge Williams): That is what you would call it in the army?

A. I didn't do it in a military capacity. I went up there as an officer of the State and a civilian.

The Court (Judge Williams): Did you have on your uniform when you went up there?

A. One time I did.

The Court (Judge Williams): What time did you go up there and have on your uniform?

A. That was incidental. I was on another duty. I was making inspection of units then.

[fol. 418] The Court (Judge Williams): What date was that?

A. I believe in February.

The Court (Judge Kennamer): General, is all this martial law proclamation, and you going up there a sham and bluff?

A. Judge, you will have to come to that conclusion yourself. As far as I was concerned it was not.

The Court (Judge Williams): Go ahead.

By Mr. Cobb:

Q. General Ledbetter, did you or any of the men acting under you, at any time interfere with the work, or the completion, construction of this dam?

The Court (Judge Williams): I excluded that; that calls for a conclusion. It is for this court to pass on that. You may ask him what he did, and what he said, and what they did. You are not going to try this like you would try a case in one of these County Courts before a jury.

Mr. Cobb: All right, I will ask General Ledbetter this question.



Q. General Ledbetter, just start right in from the beginning after you received this directive from the Governor, Exhibit No. 11, and tell the court what you did?

A. Well, I anticipated the order the night before.

The Court (Judge Williams): How come you to anticipate it?

A. Well, I heard it discussed.

The Court (Judge Williams): Who did you hear discuss it?

[fol. 419] A. I believe I heard the Attorney General discussing it.

The Court (Judge Williams): Very well.

A. And I alerted M Company.

The Court (Judge Williams): What do you mean by that?

A. Had them stand by.

The Court (Judge Williams): Where was headquarters of M Company?

A. At Tahlequah.

The Court (Judge Williams): You called them over the phone and told them to be ready?

A. I called the Captain and told him to be ready for the order.

The Court (Judge Williams): And that was on the night of the 12th; that was the night before; is that correct?

A. I believe it was on the morning of the 13th. I was in Muskogee at the time and went back to Oklahoma City.

The Court (Judge Williams): You said the night before you alerted M Company?

A. I think I was wrong on that.

The Court (Judge Williams): Very well, you have corrected it.

A. The proclamation was signed the evening of the 13th. I alerted them that evening and moved them to Wagoner.

The Court (Judge Williams): You thought they were so dangerous you ought to move them along the western front?

A. I was going to be ready for any emergency to carry [fol. 420] out any order of the Governor.

By Mr. Cobb:

Q. When you made your visit to the dam on March 1st, were you there in your official capacity or personal capacity?

A. I was in my private, personal.

The Court (Judge Williams): But he has testified he went there one time with a uniform, the other time he was not.

Q. Did it appear to you at that time the dam was nearing completion?

A. Yes sir.

Q. Did you make any inquiry about whether or not any State highways or State property would be inundated and destroyed if that dam was closed and completed?

A. Not at that time, no.

Q. Go ahead and tell the court in chronological order just what happened with reference to the use of the militia out there at the dam?

A. I ordered on duty M Company and Colonel Donnell.

The Court (Judge Williams): M Company was a machine gun company?

A. Yes sir.

Q. You ordered on duty M Company and Colonel Donnell?

A. And placed Major Parris in command.

The Court (Judge Williams): Now Colonel Donnell is professor of engineering at the A. & M. school?

A. Yes sir.

The Court (Judge Williams): Why did you put him on duty?

[fol. 421] A. So he could inform me of the possibility of any obstruction to the public highways by reason of any work being done at the Grand River Dam.

The Court (Judge Williams): That was to see how near it was completed, wasn't that in mind, too?

A. No, sir, I could see that myself.

By Mr. Cobb:

Q. Now what did M Company do pursuant to your orders?

Mr. Wiener: Now just a minute. I don't know that the witness is competent to testify to that. M Company was at Tahlequah and sent to Wagoner.

The Court (Judge Williams): He can only testify what he knows.

Q. What did you order them to do?

Mr. Wiener: That is in evidence.

The Court (Judge Williams): Did you issue any orders other than shown by these exhibits here?

A. No, except verbal orders to Major Parris.

The Court (Judge Williams): I will let you prove what he told Major Parris.

Q. All right, what did you tell Major Parris?

A. I told Major Parris I would put at his disposal M Company, a detachment of Service Company with convoy of trucks, and they were to meet him at Wagoner, and he took command at Wagoner and I have no personal knowledge of what he did from then on except his reports to me. The next time I saw M Company was at the dam site.

Q. Now what was that date?

[fol. 422] A. They had moved out of Wagoner.

The Court (Judge Williams): Now what date was that?

A. That was the 14th, I believe.

The Court (Judge Williams): What time?

A. About 8 o'clock in the morning.

Q. How many men were there?

A. They were in trucks, forty men.

Q. How many trucks?

A. I believe 9 trucks.

Q. And what did they do there at the dam site that morning?

A. Exactly nothing.

Q. Did they get out of the trucks?

A. They did not.

Q. How long did they stay there in the trucks?

A. My estimate is we held the trucks there merely for the purpose of routing them home. That was the only delay there, about twenty minutes.

Q. Did you order them to leave or did Major Parris?

A. I directed Major Parris to make the order.

Q. And why did you issue that order?

Mr. Wiener: Is that material, Your Honor?

The Court (Judge Williams): Yes, I will let you state what he directed him to do.

A. Well, Major Parris really had directed the company not to proceed to the dam site.

The Court (Judge Williams): Did you hear him do that?  
[fol. 423] A. No, sir.

Mr. Wiener: We move to strike that out, Your Honor.  
 The Court (Judge Williams): Motion sustained. Now what you told him, that is competent.

By Mr. Cobb:

Q. Now, what did you order or tell Major Parris to do there that morning with reference to Company M?

A. Send them home.

Q. And did Company M leave?

A. It did immediately.

Q. Now then with reference to Major Parris—Let me ask you this further question. Was there any equipment, arms, machine guns, anything like that taken out of the trucks that morning?

A. There was not.

The Court (Judge Williams): Were there any in the trucks, or do you know?

A. I didn't see any.

The Court (Judge Williams): Well, did you look so you could see?

A. I made no inspection.

The Court (Judge Williams): Now the order for them to be alerted and ready contemplated for them to take up their arms?

A. Yes, sir; I wouldn't be fool enough to take a company of soldiers that were not armed.

The Court (Judge Williams): You considered it if it was necessary to send them up there it was necessary to send them with the regular equipment of the company?

[fol. 424] A. Yes, sir.

By Mr. Cobb:

Q. Now after M Company left what further orders, if any, did you give Major Parris?

A. Directed him to remain at the dam site until he was relieved, and make periodical reports, and observe.

The Court (Judge Williams): Observe what?

A. The construction of the dam and the flow of the river.

Q. Did it appear at that time that the dam was nearing completion?

A. It appeared that it was nearing completion, yes, sir.



Q. And if completed that State highways and public property would be inundated and destroyed by back water?

Mr. Wiener: I don't think a witness at the dam site is competent to testify to that.

The Court (Judge Williams): There is no predicate laid for that character of evidence, and the objection is sustained.

Q. Did you find any one else there, any local peace officers attempting to protect the State highways and bridges from inundation?

Mr. Wiener: Same objection.

The Court (Judge Williams): No predicate laid for it. The objection is sustained.

Q. General Ledbetter, did any of the men,—Did you at any time issue any order to any of the men to interfere with the construction of this dam?

A. I did not.

Mr. Cobb: That is all.

(Witness excused.)

[fol. 425] The Court (Judge Williams): Court will take a recess until 1:30 this afternoon.

(Thereupon the further hearing of this cause was recessed until 1:30 o'clock, P. M.)

At 1:30 o'clock, P. M., March 26, 1940, court met pursuant to recess, the parties being present and represented by counsel as hereinbefore noted, whereupon the following proceedings were had and done, to-wit:

Mr. Wiener: If the court please, may I have permission to recall General Ledbetter for just one or two questions?

The Court (Judge Williams): Very well.

LOUIS A. LEDBETTER, recalled for further examination, and being duly examined at the time and place above mentioned, testified as follows:

Redirect examination:

By Mr. Wiener:

Q. General Ledbetter, who supplies the arms and munitions for the Oklahoma National Guard?

A. The United States.

Q. Who supplies the uniforms for the enlisted men?

A. The United States.

Q. And who supplies the motor vehicles?

[fol. 426] A. The United States.

Mr. Wiener: That is all.

(Witness excused.)

HARRY B. PARRIS, called as a witness on behalf of the complainant, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct examination.

By Mr. Wiener:

Q. State your name, please?

A. Harry B. Parris, Eufaula, Oklahoma.

Q. Your position with the Oklahoma National Guard?

A. Plans and training officer on the regimental staff of the 180th Infantry.

Q. And your occupation in civil life?

A. Attorney.

Q. Have you brought with you in response to our subpoena certain documents?

A. Yes, sir.

Q. And will you as you hand them to me describe them?

A. First is a telegram received from the Adjutant General while I was waiting at Wagoner; copy of Special Order No. 39; my personal diary of my tour of duty.

Mr. Wiener: We will ask that the telegram be marked [fol. 427] as Government's Exhibit No. 12, and copy of the order as Government's Exhibit No. 12-a, and copy of the diary as Government's Exhibit 12-b.

I offer these documents in evidence. Do Your Honors want me to read them?

The Court (Judge Williams): Yes.

Mr. Wiener: This is a Western Union telegram from Oklahoma City, Oklahoma, March 13, 1940, 6:00 P. M. "Major Harry B. Parris, Wagoner, Okla. Special Orders Number 39, AGO, March 13th, 1940. Following officers and men on active duty enforcing martial law in Mayes County as per

executive order Governor, Colonel Phillip S. Donnell, Major Harry B. Parris, Detachment, Service Company, 180th Infantry, Company M, 180th Infantry. Ledbetter, Adjutant General."

Exhibit 12a is a copy of Special Orders 39, which is already in evidence under another number.

Now Exhibit 12-b is the diary of Major Parris from 2:30 A. M., March 13, 1940, to 4:00 P. M., March 21, 1940. Do Your Honors wish me to read it?

The Court (Judge Williams): Read it.

Mr. Wiener: "2:30 A. M., Wednesday, Mar. 13, 1940.

Received call from Maj. Routh, Ex. Of. to the Adjutant General, directing me to meet troops at Wagoner between 6:00 and 7:00 A. M., Mar. 13.

5:10 P. M. Left home station in company with Lt. Shields, Co. H, 180 Inf.

[fol. 428] 6:30 A. M. Arrived at Wagoner, reported at Sheriff's office. No troops.

8:10 A. M. Send wire to A. G. O. advising arrival and non-arrival of troops.

9:20 A. M. File Comm. with A. G. O. advising me that troops had just — Tahlequah and directing that troops be held in Armory until further orders.

10:05. Troops arrived, equipment checked. Authorized Capt. Bliss to procure equipment listed on Memo sheet from Capt. Jones.

5:27 P. M. Recd. call from A. G. O. advising that Proclamation of Gov. had been issued and requesting my plan for carrying out order; the following plan authorized and approved; that I, in company with Capt. Bliss and Lt. Shields proceed by private transportation to Langley and dam site to ascertain situation; that troops be held for the night at Armory at Wagoner under command Lt. Gore; troops to be fed breakfast at Wagoner Mar. 14 and unless otherwise directed by competent authority to leave Wagoner at 6:00 A. M., Mar. 14 and proceed to dam site. Capt. Jones and Lt. Reed requested to assist in arrangements for feeding breakfast; all troops to be held in Armory and not permitted to roam about. Plan approved by A. G. A.

6:50 P. M. Rec'd telegram A. G. O. and immediately left for dam site—Via Vinita—considerable trouble—lost—arrived at dam about 9:00 P. M.—met Supt. of Construction Towne—meeting very agreeable; advised him of my instruc-

tions—he inquired as to extent of work as I was instructed to stop—advised him that I did not understand that my instructions [fol. 429] required me to interfere with any work that did not obstruct flow of Grand River—he advised that concrete work on Arch No. 6 had been poured to height of 30 ft., that further concrete could not be poured until expiration of 60 hours; that the work now being done was simply finishing or polishing and that the flow of water would not be interfered with. I advised him that if this was correct I would make no attempt to stop this work pending further instructions and orders.

9:15. Made inspection of dam in connection with Supt.—observed that water was flowing in channel—advised Supt. that it was not the intention of Gov. Phillips to interfere with any work that did not prejudice the rights of the State as outlined by him and that Gov. did not desire to force unemployment upon men unless necessary to protect rights of State.

9:30 P. M. Placed call for A. G. O. at Wagoner and Gov. Phillips.

10:10 P. M. Reported to Gov. Phillips.

10:25 P. M. Talked to Capt. Jones at Wagoner in lieu of A. G. O.—directed him to advise A. O. of my actions and that I could be called at phone 14, Disney.

12:45 A. M., Mar. 14. Left for inspection of dam.

2:10 A. M. Returned from inspection—Water still flows—no work being done on #6 on this shift.

2:30 A. M. Bed—Bunk house 1.

8:30 A. M. A. G. and Col. Cox arrived.

9:13 A. M. Truck convoy and troops under command of [fol. 430] Lt. Gore arrived and reported; troops did not detruck and at 9:40 A. M. directed to return to home station.

11:00. Supply truck arrived during my absence and found them on my return from Engineers office at Langley. Instructed them to return to Okla. City with supplies immediately after dinner.

11:15 to 12:10. Visited dam in conjunction with Col. Cox—the dam still grows and the water still flows.

Mar. 14, 1940, 5:30 P. M. Advised Mr. Towne that no work was to be stopped or any change made in their plans except upon written order and in absence of such written order work is to proceed according to their plans. Mr. Towne advises that their present plan does not contemplate the



closing of the six holes in arches 7 and 8 before the expiration of ten days or 2 weeks.

7:30 P. M. to 8:30 P. M. Visited Dam with Mr. Davis—Dam still grows—Water still flows.

Mar. 15, 1940, 8:30-10:00 A. M. Visited Dam—Ditto.

10:47 A. M. Talked to A. G. O.—advised to wait until afternoon for instructions.

1:40 P. M. Visited Dam—Ditto.

7:00 P. M. Talked to A. G. O.

8:15 P. M. Dam.

Mar. 16, 1940, 7:30 to 9:00 A. M. Visited Dam.

11:30. Directed Capt. Bliss to report to A. G. O.

4:30 P. M. Reported to A. G. O.

6:30 P. M. Went to Claremore after station wagon.

[fol. 431] 10:30 P. M. Returned with station wagon.

Mar. 17, 1940, 8:30. Visited Dam.

11:15 A. M. Talked to A. G. O.—instructed to relieve Capt. Bliss & Lt. Shields if they desire to be relieved.

12:30 P. M. Lt. Shields relieved.

1:30 P. M. Lt. Shields left for Home Station.

4:00 P. M. Visited Dam.

Mar. 18, 1940, 8:00 A. M. Visited Dam—Paid board.

9:00 A. M. To Vinita.

2:00 P. M. Visited Dam.

5:30 P. M. Visited Dam.

Talked to Gov. at 1:30 P. M.

Mar. 19, 1940, 9:00 A. to 1:00 P. Visited Dam.

4 P. M. Visited Dam.

8:30 P. M. Visited Dam.

Wednesday, Mar. 20, 1940:

7:30 A. M. Visited Dam.

8:20 A. M. Vinita.

10:00 A. M.—Left for Miami.

Mar. 20, 1940:

12:15 P. M. Returned to Dam.

1:30 P. M. Talked to A. G. O.—directed to call back at 4 P. M.

3 P. M.—Visited Dam.

4 P. M.—Talked to A. G. O.—promised relief Thursday.

7 P. M. Visited Dam.

[fol. 432] Mar. 21, 1940—Thursday.

8:00 A. to 9:10 A. M. Visited Dam—Dam still grows—water still flows.

11:30. Talked to A. G. O. advised that Capt. McKain & Harrison were on way to relieve and advised not to await their arrival.

All Bills Paid.

12:30. Capt. Bliss and myself leave for Home Station.

4 P. M. Arrived home."

Mr. Wiener: No further questions.

Mr. Cobb: No questions.

(Witness excused.)

BENJAMIN BLISS, called as a witness on behalf of the complainant, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct examination.

By Mr. Wiener:

Q. State your name and residence and position in Oklahoma National Guard?

A. Benjamin Bliss, Tahlequah; Captain Company M 180th Infantry.

Q. And your occupation in civil life?

A. Deputy Court Clerk.

Q. Have you in response to subpoena brought with you [fol. 433] copies of all orders received by you?

A. My orders were all verbal.

Q. Have you in response to our subpoena copies of all reports made by you?

A. I made no reports.

Q. Did you in pursuance to your orders go to the dam site with Major Parris?

A. Yes, sir.

Mr. Wiener: That is all.

The Court (Judge Williams): Any questions?

Cross-examination.

By Mr. Cobb:

Q. At the time that you went to the dam with Major Parris were you armed?

A. Yes, sir.

Q. What kind of arms did you have?

A. Rifles, machine guns and pistols.

Q. At the time that you went to the dam with Major Parris?

A. No, wait a minute.

Q. Where did you have these machine guns and pistols?

A. They were with the troops.

Q. In the trucks?

A. Yes, sir.

Q. Were they taken out of the trucks?

A. No, sir.

[fol. 434] Q. And did the men on the trucks get out?

A. No, sir.

Q. How long were they there at the dam site?

A. About thirty minutes, I guess.

Q. Did you return with the men and the trucks?

A. No, sir.

Q. You stayed at the dam site with Major Parris?

A. Yes, sir.

Q. At any time you were there did you use any force to prevent any work on the dam from being done?

A. No, sir.

Mr. Cobb: That is all.

(Witness excused.)

LEM W. SHIELDS, called as a witness on behalf of the complainant, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct examination.

By Mr. Wiener:

Q. State your name, residence and position in the Oklahoma National Guard?

A. Lem W. Shields.

The Court (Judge Williams): The way I construe that, when they go there with authority, dressed as soldiers, their [fol. 435] presence is force.

A. I live at Eufaula; Second Lieutenant in Company H 186th Infantry.

Q. Have you brought in response to our subpoena copies of military orders issued to you?

A. I have no such orders.

Q. Have you brought with you in response to our subpoena copies of written reports made by you pursuant to your actions under that declaration?

A. I have no written reports.

Q. Have you copies of any diaries kept by you?

A. No, sir.

Q. Your orders were oral?

A. Yes, sir.

Q. And in pursuance to those orders you proceeded to the dam site?

A. Yes, sir.

Q. When did you return? When were you relieved?

A. About 12:30 Sunday.

Q. Which Sunday?

A. Following the 13th; I don't know the exact date. That would be the 17th.

Mr. Wiener: That is all.

Cross-examination.

By Mr. Cobb:

Q. Lieutenant Shields, when did you arrive at the dam site?

[fol. 436] A. About between 8 and 9 o'clock on March 13th.

Q. 8 and 9 o'clock on March 15th. Did you go with the trucks?

A. No, sir, I went with Captain Bliss.

The Court (Judge Williams): I understood him to say it was the 13th.

A. It was Wednesday; I am not sure of the date. The same night Major Parris and Captain Bliss went to the dam.

Q. Who was your immediate superior officer?

A. Major Parris.

Q. Now were you armed while you were there at the dam site?

A. I didn't carry a gun on my person.

The Court (Judge Williams): You didn't answer the question. Were you armed?

A. I kept a pistol in my car.



Q. And where was your car located?

A. I drove it to the dam and parked it somewhere within the vicinity of the Massman office.

Q. Did you ever take that pistol out?

A. No, sir.

Q. At any time did you use any force or threats against any of the men working around the dam?

A. No, sir.

Q. Did you do anything to prevent any work from going on at the dam?

A. No, sir.

Mr. Cobb: That is all.

[fol. 437] The Court (Judge Murrah): Was there any resistance there?

A. No, sir.

The Court (Judge Kennamer): It was a bloodless war?

A. Yes, sir.

Mr. Cobb: Did work go on while you were at the dam?

The Court (Judge Williams): Now you may ask them what they were doing.

Mr. Cobb: All right, what were they doing at the dam?

A. Well, they were working. I don't know what they were doing. Mr. Towne said they were finishing up concrete on No. 6. They were not going any higher but were putting the finish, something to that effect, on arch 6.

The Court (Judge Williams): Finish on what they had already poured?

A. Yes, sir.

Mr. Cobb: Did you receive any orders from Major Parris, or any one else in the National Guard, to use any force at that time?

The Court (Judge Williams): I won't permit that. You can ask him what orders he received.

Mr. Cobb: All right.

The Court (Judge Williams): This is not a kangaroo court. It is a court where intelligent questions should be asked.

Mr. Cobb: All right, what orders did Major Parris issue to you?

A. That night, or later?

[fol. 438] Mr. Cobb: When you arrived at the dam?

A. He didn't issue any orders.

Mr. Cobb: Did he issue any orders later to you?

A. I received one order. I am not sure whether it came from Major Parris or General Ledbetter, the morning the troops arrived.

Mr. Cobb: What was that order?

A. To take my car and stop the troops before they came within the dam area.

Mr. Cobb: Did you carry out that order?

A. No, sir. As I proceeded to carry out the order the troops reported before I left the dam.

Mr. Cobb: Those troops came in trucks?

A. Yes, sir.

Mr. Cobb: And did they get out of the trucks?

A. No, sir.

The Court (Judge Williams): Any of them?

A. No sir.

The Court (Judge Williams): No officer got out of the truck?

A. I am not sure whether any officers came in trucks, or not.

The Court (Judge Williams): How would they do anything there if they didn't come in trucks?

A. Private transportation.

The Court (Judge Williams): What do you mean by private transportation?

A. Some of them had their cars.

[fol. 439] The Court (Judge Williams): Were they Government cars or their own individual cars?

A. Their own individual cars.

Mr. Cobb: That is all.

Mr. Wiener: No re-direct.

(Witness excused.)

ORAN MCCAIN, called as a witness on behalf of the complainant, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct examination.

By Mr. Wiener:

Q. State your name and residence?

A. Oran McCain, Tulsa.

Q. Your occupation in civil life?

A. Lawyer.

Q. And you are First Lieutenant in 160th Field Artillery Oklahoma National Guard?

A. Yes, sir.

Q. Other than Special Orders 41, Oklahoma National Guard, which is Government's Exhibit No. 11-d, did you receive any written orders from your military superiors?

A. No, sir.

Q. And pursuant to this Special Orders 41 you proceeded [fol. 440] to the dam site?

A. Yes, sir.

Q. And have you been relieved?

A. No, sir.

Mr. Wiener: No further questions.

The Court (Judge Williams): You were an artillery officer?

A. Yes, sir.

Cross-examination.

By Mr. Cobb:

Q. What is your rank in the National Guard?

A. First Lieutenant.

Q. When did you arrive at the dam site?

A. About 10:30 Thursday evening.

The Court (Judge Williams): What is that, the 14th?

A. I believe it was the 21st.

The Court (Judge Murrah): 21st of March?

A. Yes, sir, 21st.

Q. That is the first time that you were at the dam site?

A. Yes, sir.

Q. And did any one go with you?

A. Yes, sir, Lieutenant Harrison came by.

Q. Lieutenant Harrison?

A. Yes, sir.

The Court (Judge Williams): What command does he [fol. 441] belong to?

A. Headquarters Special Troops, 45th Division.

Q. Did you bring any cannons with you?

A. No sir.

Q. Now what orders did you receive? Who was your superior officer?

A. Lieutenant Harrison.

Q. Now what orders did he issue to you?

A. He told me that we were to act as military observers.

Q. And what were you to observe?

A. The progress of the dam.

Q. And did you do that?

A. Yes, sir.

Q. And who did you make your reports to?

A. To him.

The Court (Judge Williams): In writing?

A. No sir.

Q. Now did you use any force at any time?

The Court (Judge Williams): What did they do. That question calls for a conclusion; it isn't competent. There may be some courts it is competent in, but it isn't in this court, and it don't help the lawyer to ask that kind of question.

Q. All right, what did you do while you were at the dam site?

A. I made frequent trips to the dam and observed the arches and the water, and reported to Lieutenant Harrison.

Q. What did you see?

A. The first night I arrived there, went down to the river [fol. 442] about 11 o'clock and the water was flowing through, and they were building sand bag dam down there then. Somebody told me it was a coffer dam. The next morning the water was almost stopped, and later on it opened up again, and then about mid-night they closed where no water could go through at all where I could see.

Q. Did you report those observations?



A. I reported to Lieutenant Harrison every time except those times he was with me.

The Court (Judge Williams): Now you mean what night? Friday night, that is the 22nd?

A. Yes, sir.

The Court (Judge Williams): Thursday was the 21st?

A. Yes, sir.

Q. Is that all you did at the dam site in your capacity as a National Guard officer?

A. Yes, sir.

Mr. Cobb: That is all.

(Witness excused.)

W. E. HARRISON, called as a witness on behalf of the complainant, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct examination:

By Mr. Wiener:

[fol. 443] Q. State your name?

A. W. E. Harrison.

The Court (Judge Williams): Now Mr. Reporter let the record show that all these officers of the National Guard have appeared here in their regular uniforms.

Q. Where do you live?

A. Oklahoma City.

Mr. Cobb: If the court please, not all of them have appeared in their uniform.

The Court (Judge Williams): All of them that have testified here. Now which one? Let's get the record here. Which one has testified, that has been on the witness stand that didn't appear in his uniform?

Mr. Cobb: General Ledbetter was in civilian clothes; Major Parris, Captain Bliss, Lieutenant Shields, was in civilian clothes. Lieutenant McCain was in uniform, and the present witness, Lieutenant Harrison, is in uniform.

The Court (Judge Williams): And they are on active duty now.

Mr. Wiener: Under Special Orders 41. And I repeat, Mr. Cobb, that is the reason they are in uniform, because they are still on active duty.

Mr. Cobb: I couldn't say.

The Court (Judge Williams): You make a picture of this case. This case is to be tried according to the facts and the law.

[fol. 444] Mr. Wiener: Yes, Your Honor.

The Court (Judge Williams): The conduct of the cross-examination, at least as far as I am concerned, require that to be done.

By Mr. Wiener:

Q. And where do you live?

A. Oklahoma City.

Q. What is — rank and unit in the Oklahoma National Guard?

A. First Lieutenant Headquarters Detachment, Special troops.

Q. What is your occupation in civil life?

A. Attorney.

Q. You proceeded to the dam site pursuant to Special Orders 41 issued from the headquarters of the Oklahoma National Guard?

A. That is right.

Q. Are you still stationed there? I withdraw that question. Under your orders and but for the subpoena issued to you in this case are you still stationed at the dam site on active duty pursuant to those orders?

A. I haven't been relieved from active duty. However, I haven't been at the dam site since Sunday morning.

The Court (Judge Williams): Where have you been in the meantime?

A. I was in Tulsa Sunday afternoon and night, and for the rest of the time I have been here.

The Court (Judge Williams): You have been here attending court?

A. Yes sir.

[fol. 445] The Court (Judge Williams): Very well.

Q. Were you in Tulsa on official business?

A. Yes sir.

Q. Where did you report there?

A. I reported to the Tulsa Hotel.

Q. To whom did you report at the Tulsa Hotel?

A. To General Ledbetter.

Q. Will you explain for the record why it is you are in uniform?

A. Well, I was ordered up here on active duty with the Guard. Of course I had no idea this was coming up and I didn't bring any civilian clothes.

Q. What do the Guard regulation- provide as to the clothing to be worn by officers on active duty?

A. That is up to the Commander at that particular time.

Q. What were your orders with regard to uniform?

A. I had no orders.

Mr. Wiener: Cross-examine the witness.

Mr. Cobb: That is all.

(Witness excused.)

The Court (Judge Williams): Now recall the other witness. Let's get the record complete.

ORAN MCCAIN, recalled for further examination, and being duly examined at the time and place above mentioned, testified as follows:

[fol. 446] Direct examination.

By Mr. Wiener:

Q. Lieutenant McCain, are you still under active duty orders?

A. Yes sir.

Q. Will you please explain why you are wearing the uniform at this time?

A. Well, that is all the clothing I have with me.

Q. Do the regulations require that uniforms be worn on active duty?

A. Yes sir.

Q. And is that the reason why you are in uniform?

A. Yes sir.

Mr. Wiener: That is all.

Mr. Cobb: That is all.

(Witness excused.)

Mr. Wiener: Now if Your Honors please, I offer as Government's Exhibit No. 13 a certified copy of the restraining order and the petition in the Ottawa County suit. I offer this simply to show what the papers contain, and not for the truth of any of the matters therein stated.

And I offer as Government's Exhibit No. 13-a a certified copy of the suggestion of lack of jurisdiction filed by Mr. Mauzy in the Ottawa County District Court on Wednesday morning, March 20th, and offer that also under the limitation simply to show what is filed and not as the proof of any matters therein stated.

Mr. Cobb: We have no objection to a certified copy of [fol. 447] the restraining order being received in evidence.

The defendants object to the suggestion of the Attorney General of the United States to the lack of jurisdiction for the reason it is not within any of the issues in this case, and all of the facts with reference to how the matter was presented to the court are not in evidence. I think if it is tendered here Mr. Mauzy, the United States District Attorney, should take the stand and state what he did with it.

Mr. Wiener: It is a certified copy.

The Court (Judge Williams): It will be admitted. They may have their exceptions.

Mr. Cobb: Exceptions.

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W. R. HOLWAY, called as a witness on behalf of the complainant, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct examination.

By Mr. Wiener:

[fol. 448] Q. Mr. Holway, will you state your name, residence and occupation?

A. W. R. Holway; residence, Tulsa, Oklahoma; occupation, Chief Engineer of the Grand River Dam Authority.

Q. You are a defendant in this case?

A. Yes sir.

Q. Now will you briefly state your engineering experi-



ence, with particular reference to the design and construction of dams, hydroelectric dams, etc.?

A. Since graduation in 1913 from the Massachusetts Institute of Technology I have spent all of my time on hydroelectric structures, water supplies, and power dams, and other structures that go with them, pipe lines, etc.

Q. What sort of dams have you designed and built in the past?

A. Earthen dams, rock built dams, concrete dams.

Q. What particular dams have you designed and constructed in your capacity as engineer?

A. Designed and built the Spavinaw dam, five miles south of the Pensacola dam; built dams at Fort Smith, Arkansas, Ponca City, Oklahoma, Pawnee, Perry, Holdenville, Snyder, Hobart, in Oklahoma; designed dams for the Cuban Government, concrete dams; designed two large earthen dams for the Russian Government.

Q. Any other dams in the United States?

A. Some smaller dams.

Q. Showing you Government's Exhibit 8-a for identification, will you please describe that map, and state whether [fol. 449] the red markings were made there under your direction and supervision?

A. This is a map of the Grand River dam reservoir showing the location.

The Court (Judge Williams): Is that Exhibit 8?

Mr. Wiener: It is the same as Exhibit 8. It is just another copy.

A. This map shows the various contracts relating to the project, and shows in red the quarter section of land that was described in the martial law proclamation.

Q. Was that prepared under your supervision and direction?

A. It was.

Mr. Wiener: We re-offer this in evidence.

The Court (Judge Williams): Very well, without objection it is admitted and considered in evidence.

Q. Now just briefly, Mr. Holway, will you explain for the benefit of the court the general construction features of the Grand River dam, as to type? I want to bring out particularly the difference between this kind of a dam and other types of dams?

A. A portion of this dam is a concrete gravity dam.

Q. What do you mean by gravity dam?

A. A gravity dam is a dam which will stay in place due to its own weight. Retain the weight of water behind it with its own weight.

Q. Now what kind of dam is the Grand River dam with particular reference to that portion of it which is on the bed of the Grand River?

[fol. 450] A. The spillway section is a gravity dam. The major portion of the dam is a multiple arch dam, with buttresses supporting arches with a 64 span.

Q. About how thick are those concrete arches?

A. From about 5 feet thick at the bottom to 2, or less than 3 at the top.

Q. So the arches really are concrete shells, am I correct in that?

A. Yes sir.

Q. And the shell is so designed as to withstand the weight of the water in the pool in back of it?

A. It carries the weight of the water on to the buttresses, as the arches of a bridge carries the load on to the piers of the bridge.

Mr. Wiener: Now if it will assist Your Honors, I imagine it may assist any appellate tribunal, I have some pictures here which I can have the witness identify.

The Court (Judge Williams): Well, that will probably be better.

Q. Showing you, Mr. Holway, Government's Exhibit No. 19 for identification, will you describe this photograph?

Mr. Wiener: Or would it be more helpful to Your Honors at this time to have a map of the entire region.

The Court (Judge Kennamer): You want to show what would result by leaving that dam unfinished?

Mr. Wiener: Yes sir.

The Court (Judge Williams): He can refer to those pictures.

[fol. 451] Mr. Wiener: Is there any objection to these pictures, I will offer them in one batch.

Mr. Dudley: No objection.

Mr. Wiener: I offer those in evidence.

The Court (Judge Williams): Now what number are you working on now?

Mr. Wiener: This—

The Court (Judge Williams): What is the last exhibit before these others?

Mr. Wiener: 13 and 13-a were pleadings in the State court proceeding.

The Court (Judge Williams): Then this will be 14 and the little letters down, and you have them all in one batch.

Mr. Wiener: Then I had better re-number them. These exhibits will be numbered 14, 14-a, 14-b, 14-c, and 14-d.

By Mr. Wiener:

Q. Now Mr. Holway, addressing yourself to the question of the openings, will you please explain, first in your own language and remembering that we are lawyers and not engineers, the problem of the dam closing, explaining where the openings are, why they were made here, and how it is necessary to close them? Will you explain that, first using the Exhibits 9 and 10, and Exhibits 14 to 14-d, inclusive?

A. The openings in the bottom of the dam were left to take care of the low water flow on the Grand River during the final closure of the dam. Previous to the construction [fol. 452] of the arches across across the river itself the water could go through between the buttresses. No. 6 arch was left to the last and the rock was paved with concrete between 5 and 6 to provide a smooth water way for the water during high water before arch No. 6 was built. There were 6 openings left; 5 of them for the contractor's use, and one for the Authority's use. The contract provided for one opening with a steel or cast iron gate, which could be opened and shut as the reservoir filled in order that water might go down the stream for users of water below the dam. That gate normally will be closed as the lake fills, and when it has reached elevation 678 the gate will be entirely closed and plugged with concrete.

Q. From what source will the down stream users get their water?

A. From the permanent outlet of the dam at elevation 675, and water that goes through the turbines. The other 5 openings were left, as I said, for the contractor's use, and it was his obligation to plug those at his own expense when he was ready to close the dam. He submitted schedules to us showing that when the arches had reached elevation 700, when arch No. 6 had reached elevation 700, he was

ready to close the temporary openings, all except the steel or cast iron gate opening.

Q. Now what factors were considered with reference to the best time, from an engineering point of view, as to when to close the openings?

A. The only practicable time to close openings is at low water stage of the river.

[fol. 453] Q. And on what basis do you determine when low water is going to be on the Grand River?

A. We never know but the best time for closure is usually in January, February or March.

Q. And in that connection did you make studies of the water experience on the Grand River?

A. Yes sir.

Q. And did you make charts which illustrate that.

A. Yes sir, they are in the contract drawings submitted to the bidders.

Q. Showing you Government's Exhibit No. 15 for identification, will you identify that, please?

A. That is sheet No. 4 of the contract drawings on contract 7, and represents the hydrographs of the Grand River platted from the United States Geological survey records for the years 1925 to 1937, inclusive.

Q. What do the high portion of the graphs indicate?

A. Floods.

Q. And this shows the floods over a number of years?

A. Yes sir.

Mr. Wiener: I offer this in evidence.

The Court (Judge Williams): What exhibit is that?

Mr. Wiener: As Government's Exhibit No. 15.

The Court (Judge Williams): Any objection.

Mr. Dudley: No objection.

The Court (Judge Williams): It is introduced in evidence.

[fol. 454] The Court (Judge Kennamer): Tell me, when does that show the general flood period on the Grand River?

A. The most consistent floods are in April, May and June.

Q. Now what was the precise situation with reference to the schedule for closing which you as Consulting Engineer had in mind on the 13th of March? Let's take noon on March 13th?

A. At noon on March 13th the arch No. 6 was being carried up. It had been restrained by the District Court of Ottawa County.



Q. I am speaking of March 13th, at noon, which according to the evidence in the case was before the National Guard arrived, and before the suit in the State court was filed?

A. At that time arch No. 6 lacked two or three piers of being to elevation 700.

Q. What about the openings?

A. They were wide open.

Q. And what was the plan that you had in contemplation for closing those openings?

A. The contractor's plan for closing the opening was to carry No. 6 up and the adjacent arches with it, and when arch No. 6 was at elevation 700 the openings would be closed. We give him sufficient time to carry the arches to the top of the dam before a flood could over-top the arches.

Q. Now in your opinion as an engineer as of that time, namely March 13th, and the next week following, was there any danger in prospect to the dam in case those closings could not be made?

[fol. 455] A. Yes sir.

Q. Now will you explain the reasons for that answer, and use any of the plans or photographs to illustrate your answer?

A. If the openings had not been closed and high water came down the river the first thing that would happen would be a large volume of water go through these openings at very high velocity, and scour out the rock adjacent to the buttress walls. If it was allowed or did occur for any length of time there was liability of serious undermining of the foundations, and possibly that even the buttresses themselves might topple over and fail, carrying with them the arches and possibly an adjacent arch or two.

Q. Now what is the nature of the rock on which those arches —, the rock under the bed of the Grand River?

A. At that point the top four or five feet of the bed rock is seam and sand rock. The buttress walls had gone through that rock and was seated on a very hard flint limestone, known as the Boone.

Q. Would that water going through the openings in flood had they remained open, would that have been clear river water?

A. No, muddy water.

Q. Would it have been just water, or was there any danger of driftwood and other matter?

A. The contractor had placed railroad guards up stream from the opening so no large drift could get through.

Q. Thereafter and under the protection of the restraining order issued by this court, what was done with reference [fol. 456] to closing those openings?

Mr. Dudley: We object to that question in that form, under the protection of the restraining order of this court.

Q. I will be glad to reframe it. I will withdraw it. What was done with reference to the six temporary openings in the dam?

The Court (Judge Williams): When? Fix the time, and state what was done?

Q. What was done with reference to the closing after the afternoon of March 20th, and up to as late as you have personal knowledge?

A. I think it was March 22nd, I believe, the contractor served notice on me at two o'clock in the afternoon that he was going to close the temporary openings at six o'clock that night.

The Court (Judge Williams): Now the 18th was Monday, 19th Tuesday, the 20th Wednesday, the 21st Thursday, and you say it was the 22nd?

A. Let me check that, please, Your Honor. I think I have that notice here. It was the second day, I think, after the restraining order.

The Court (Judge Williams): Give the day of the week, and the day of the month, and that fixes the record so it will be certain.

A. I don't have a copy of it here.

The Court (Judge Williams): Show him the notice.

A. March 21st.

The Court (Judge Williams): That was Thursday.

[fol. 457] Q. This paper which you are handing me is a copy of the notice?

A. Yes sir, copy of the notice that was served on me at two o'clock.

Q. The writing under the signature, whose is that?

A. That is mine.

Mr. Wiener: I offer this in evidence.

Mr. Cobb: No objection.

Mr. Wiener: This will be Government's Exhibit No. 16. It is a letter from Massman Construction Company, by Richard L. Wheatley, its attorney, to Mr. Holway. "Dear Sir: You are hereby notified that the undersigned, Massman Construction Company, General Contractor on Pensacola Dam, Contract No. 7 with the Grand River Dam Authority, will proceed to close five of the six 8 x 10 foot openings under arches 7 and 8 in Pensacola Dam across Grand River, in accordance with closure schedule heretofore submitted, at 6:00 o'clock p. m., March 21st, 1940."

Q. Now Mr. Towne testified this morning that there was still a sluice gate that was open, will you testify about that?

A. That is the steel or cast iron sluice gate I mentioned before that will be used to let water out of the dam during the period the reservoir is being filled.

Q. Is there any danger to the structure from the fact that sluice gate can be opened and closed?

A. No sir.

[fol. 458] Q. Explain why that is?

A. Because it is a small opening letting out in the large space between the buttress walls, the opening is only 8 x 10, and the buttress 60 feet over this gate, is in the very center, and concrete immediately in front of it, and the velocity will be killed and the energy dissipated.

Q. Is that gate controlled? If so how?

A. Controlled by a motor.

Q. Now directing your attention to arch No. 6, and the height of the dam—Let me ask first whether these arches are at a uniform elevation under construction? That is, is the part of the arch adjacent to the buttress at the same elevation as the top span of the arch?

A. No sir, it is about 17 feet lower.

Q. Now when you speak of elevation 700, you mean the top of the arch or the part next to the buttress?

A. In the crown of the arch.

Q. Showing you Government's Exhibit No. 17 for identification, will you state first whether that blue print with the markings was prepared by you or under your direction?

A. It was prepared under my direction.

Q. And will you state what it represents?

A. It shows,—This is the last closure schedule that the contractor submitted to us on February 10, 1940, and upon it we have colored in in red the arches as they appeared on

March 14th, in arch No. 1 to 12, inclusive, as compared to [fol. 459] the schedule submitted. In yellow the arches which were closed between March 14th and March 19th, and in orange above are the arches that have been poured as of this morning.

Mr. Wiener: I offer this in evidence.

Mr. Dudley: No objection.

The Court (Judge Williams): It may be admitted in evidence, and considered in.

A. Also shows the elevation.

Q. Now directing your attention to arch 6, what was the elevation of arch 6 as of March 13th, and when you give the elevation state whether you are measuring from the top of the arch, or next to the buttress?

A. The elevation on the morning of March 14th of top of the arch No. 6 was elevation 666.

Q. Now then would the dam be subjected to any danger, first if arch 6 had not been carried above that elevation, and second if arch 6 had not been carried above elevation 700?

A. Yes sir, in case of flood there would be extensive damage to the foundations from water falling over the arch.

Q. Now will you explain, using the photograph if necessary, just what that danger would be?

A. Well the water would drop, if it was at 700 the water would drop to elevation 615 on to the rock foundation, and unless there was a lot of water in the river below it would, might start tearing the rock out between the two buttresses. [fol. 460] Q. Was the arch 6 designed to have water overflow?

A. No sir. As I explained, we paved with concrete, thin layer of concrete, 18 inches thick, the rock surface between buttress 5 and 6 to carry the velocity of the water along the rock, but there was no design or provision made for carrying the water over the top of the arches and falling on the rocks.

Q. When the dam is completed where is the water to spill over?

A. At the east end of the dam where it is provided.

Q. And is the spillway also faced with these concrete shell arches?

A. No sir, the spillway is gravity concrete structure.

Q. Showing you Government's Exhibit No. 14-b, I will ask you to identify that?



A. That is a photograph looking east along the main spillway structure.

Q. And that is solid concrete?

A. Yes sir.

Q. And not just a shell?

A. That is correct.

Q. Now what would be the nature and the extent of the damage to be anticipated in your opinion from the water pouring over an incomplected arch 6?

A. No way of estimating what it would be.

Q. Perhaps I didn't phrase it accurately. In what way, if there was a flood, would the damage occur?

A. If over-topped the arch the rock would be broken up, [fol. 461] and if it went on long enough would undermine the buttress walls with the danger of collapsing the buttresses themselves.

Q. Now then if the arch 6 was not completed, and a flood came, are there any preventive measures which could be taken to avoid that damage?

A. No sir, not at this time.

Q. And why is that?

A. Too late. It would not be sufficient time to pave that area, and it could not be paved with the water running through the openings.

Q. In your opinion as an engineer would there have been any method of obviating the damage to be anticipated from the floods going through the unclosed openings?

A. If we had known we would have to take water through those openings it could have been designed by spending a lot of money for concrete to protect that against erosion.

Q. And how long would those preparations taken as a time factor?

A. They could have been built when the buttresses were built. It would take at least thirty days to build them now.

Q. Now what would be the effect on the power pool, and I mean by that the pool in back of the reservoir, what would be the effect of the power pool on the dam not being closed or being overflowed at one of the incomplected arches?

A. There wouldn't be any power pool.

Q. And what would be the effect of that circumstance [fol. 462] upon the power revenues from the project?

A. There couldn't be any revenues.

Q. Directing your attention now from the specific to the general, will you state in your opinion what the damage

to the whole structure would be if construction had ceased at 700 feet on arch 6, and had ceased with the 6 temporary openings still open?

A. It would depend on the size and frequency of the floods that occur during the period the arch remains unfinished and the openings remain unclosed.

Q. And what factors in connection with a flood would have a bearing on the ultimate damage to the dam?

A. The larger the flood the higher the water would rise in the reservoir, consequently a higher velocity through the temporary openings, and a probable over-topping of the incomplected arches.

Q. Is there any way to estimate what the flood would be other than an educated guess from the data that is assembled?

The Court (Judge Williams): It would be an estimate rather than a guess.

A. I was just going to say that. You would estimate it from previous history of the stream.

Q. But there would be no assurance that the flood would not be larger than what they had been in the past?

A. No sir, no assurance of it.

Q. Suppose that you don't catch the spring floods in the power pool on the basis of the hydrographic experience of [fol. 463] the river when do you estimate that the next opportunity to get a power pool would occur?

A. The average conditions, it would be another year.

Q. So if the dam were not closed now it would be another year before the project could produce revenue?

A. If you lose the rainfall through April, May and June you are quite likely to have no more large floods in the river until the next April, May and June.

Mr. Wiener: I think that is all on direct.

Cross-examination.

By. Mr. Cobb:

Q. Mr. Holway, as I understand it this dam has a spillway?

A. Yes sir.

Q. What is the height of the spillway?

A. The elevation on the crest of the spillway is 730.

Q. That is the elevation where the water would run over?

A. Yes sir, if the gates were open, gates on top of the spillway.

Q. If the gates were closed what is the elevation?

A. 755.

Q. And is that 755 also the top of the permanent part of the dam?

A. 757 is the crest of the dam.

Q. Now if the dam is completed and these six openings at the bottom of the dam are closed, will the water back up and in the reservoir area overflow and inundate the State and County highways?

[fol. 464] A. When it gets up high enough, yes.

The Court (Judge Williams): About how long will be the possibility before it would get that high?

A. Anywhere from two weeks to six months. We have flows in the Grand River when the lake would be completely filled within two weeks.

The Court (Judge Williams): And it would have to completely fill then it would run over the roads?

A. Some of the highways will be flood at elevation.

Q. The spillway is 730?

A. That is correct.

The Court (Judge Williams): I want to ask this: Now what would the probability in dollars and cents amount to for that inundation and destruction that would follow, to replace that, or could it be replaced and put back in a proper shape, so as to hold the reservoir water?

A. At elevation 730 when it is finally filled.

The Court (Judge Williams): No, if you open it up and floods come before it is closed and sweeps these buttresses out and undermines this foundation, could it ever be replaced then so it could be relied on in an engineering way, and if so what would be the proportionate cost compared to the expenditure heretofore made for the entire plant?

A. It could be replaced. It would be a matter of cost and delay in construction. The damage might reach several hundred thousand dollars from a large flood overtopping [fol. 465] the arches or going through the temporary openings unclosed.

The Court (Judge Williams): Go ahead.

By Mr. Cobb:

Q. If these six temporary openings at the foot of the dam are not closed——

A. The five plugs were finished at noon today.

Q. What do you mean by plugs?

A. Concrete that goes in behind the timber gates.

Q. In other words, five of those flood gates at the bottom of the dam have been permanently closed?

A. That is correct.

Q. And you have left one of the flood gates at the bottom of the dam open?

A. That is right.

Q. Is that to be permanently left there?

A. No sir, the contract calls for closing that up after the lake level has reached elevation 678.

Q. Is that one opening carrying off the ordinary flow of the river?

A. No sir, they are not letting that much through. It is only partially open.

The Court (Judge Murrah): Could it let that much through?

A. Yes sir, it could let through what is coming down now, but not much more.

Q. Before it took six of the flood gates to carry off the ordinary flow of the river, why will this one temporary——

The Court (Judge Williams): I don't understand he says [fol. 466] that, but they provided six. Do you mean to say it took six heretofore to carry off the flow of the river?

A. No sir.

Q. Why did you have six temporary flood gates heretofore?

A. To provide for low water and some little rise.

The Court (Judge Williams): Do you mean emergency?

A. You cannot count on having the river as low as it has been this year.

Q. Would they carry off the ordinary flow of the river?

A. I don't know what the ordinary flow is. They will carry off the ordinary low water flow.

Q. If this one remaining flood gate were left open entirely would it carry off the ordinary flow of the river now?

A. What is flowing now it would.



Q. But you say it is partially closed at this time with some sort of a gate, and the entire ordinary flow of the river now is not going through that opening?

A. That is right, the water is backing up a little.

Q. Now then is there any reason from an engineering standpoint why this situation cannot be handled by permitting this one remaining flood gate to remain open until this controversy can be settled?

A. It wouldn't do any good.

Q. Why?

A. Because any sizeable flood the opening might as well not be there, which will be four or five hundred, and may be a thousand, of second feet coming out of it, and may be [fol. 467] fifty thousand second feet going into the reservoir.

Q. If the dam were completed part of the flood waters would go over the spillway, is not that true?

A. When it got to elevation 730.

Q. At that elevation, of course, the highways would be inundated?

A. Some of them.

The Court (Judge Williams): In that condition could you proceed to manufacture hydroelectric power so you could sell the current and bring in the income on this investment?

A. If we could keep it at 730 we could make some power.

The Court (Judge Williams): How much, approximately?

A. About forty per cent, if we could hold that level at 730.

The Court (Judge Murrah): Have you taken into consideration the amount of water that would run through the turbines? In other words, a certain amount of water runs through?

A. Yes sir, when we are manufacturing energy.

The Court (Judge Williams): Now then forty per cent, what was the maximum income they figured as a result from the hydroelectric income?

A. About a million dollars a year.

The Court (Judge Williams): So that would cause a loss of \$600,000.00?

A. Yes sir.

The Court (Judge Williams): Go ahead.

By Mr. Cobb:

Q. Mr. Holway, is the dam completed at this time?

A. No sir.

[fol. 468] Q. Just how near completion is the project?

A. The dam is about 92 or 93 per cent completed.

Q. Now what remains to be done?

A. On the dam?

Q. On the dam.

A. Carrying these arches up to their full height; build the bridge across the dam, is about all on the dam.

Q. The bridge across the dam, is that across the spillway?

A. The highway bridge across the entire structure.

The Court (Judge Williams): What highway was that?

A. It never was. A new bridge we are building the whole length of the dam.

The Court (Judge Williams): That the Authority is building?

A. Yes sir.

The Court (Judge Williams): And when it is completed you will have that bridge there for the traffic going and coming?

A. Yes sir.

The Court (Judge Williams): What will be the cost of that bridge?

A. Ought to be around \$250,000.00, add that much to the cost of the project to pay for the bridge.

The Court (Judge Williams): And that would not be a toll bridge, but a free bridge?

A. It is a public bridge, yes sir.

By Mr. Cobb:

Q. What roads, Mr. Holway, will lead to that bridge?

[fol. 469] A. I don't know. It will be up to the State Highway Department to re-locate the roads over the bridge.

Q. The Authority has not provided any roads connecting up with the highway?

A. No sir.

Q. When is that part of this contract to be completed?

A. It is being built all the time. It is a part of the structure.

The Court (Judge Williams): You know the Wheeler dam and the Wilson dam?

A. Yes sir.

The Court (Judge Williams): Now the bridges go across there, and they were built with the dam?

A. Yes sir. This shows the bridge being built on top of the dam. That should be completed sometime in May.

The Court (Judge Williams): Now there is another one up there?

A. It is built the same way.

The Court (Judge Williams): And there is a bridge across the dam the public uses?

A. Yes sir.

Q. The contract for the completion of this dam, does not require that the project be completed until sometime in May?

A. No, you asked me when it would be completed.

Q. Yes.

A. The requirement of the contract as to time is now extended, is the 26th of March.

[fol. 470] Q. But the project is not completed at this time?

A. No sir, and we still have transmission lines to build, and sub-stations, and finish up the the power.

Q. So far as impounding waters is concerned; is that part of the dam completed?

A. Yes sir, we are impounding water right now.

Q. Is there any practical way from an engineering standpoint that that water can be released so as not to flood the State and County highways?

A. There is no way.

The Court (Judge Williams): How far are these county highways, how far would they be from this bridge being constructed across the dam?

A. One county highway was just north of this.

The Court (Judge Williams): How far.

A. About a mile on one end and three miles on the other. That is the one that goes across to catch the ferry.

The Court (Judge Williams): And this would take the place of the ferry where the public had to pay for the ferry?

A. Yes sir.

The Court (Judge Williams): And this would give them free transportation across there?

A. Yes sir.

Mr. Cobb: May I ask counsel if this map, Government's Exhibit 8-a is offered only for the purpose of showing the area in which martial law was declared?

[fol. 471] Mr. Wiener: That is right.

Mr. Cobb: And not for the purpose of showing re-location of bridges.

Mr. Wiener: No, just to show martial law in relation to the dam site, and the area anticipated to be flooded.

The Court (Judge Kennamer): Mr. Holway, I would like to ask you this question. If the work was tied up over there and the dam left incomplete with these gates open, would there be any injurious effect on property that lies below the dam?

A. If the lake got full enough to go over the incompleated arches and undermine the foundations and this dam went out, this portion of the dam went out, a very large flood would occur down the river.

The Court (Judge Williams): Then that would destroy the flood control effect of it?

A. Yes sir, make it worse.

The Court (Judge Williams): In place of being a control and release it would be a menace?

A. Yes sir.

The Court (Judge Williams): That is all.

Mr. Wheatley: If the court please, may I ask the witness a few questions?

The Court (Judge Williams): Yes.

### Examination.

By Mr. Wheatley:

[fol. 472] Q. Mr. Holway, when did work start on the project by the contractor, about?

A. About August 20, 1938.

Q. Can you state whether or not it was planned or designed at that time so that the work could be completed at this particular season of the year on account of the low water stage of the river?

A. No sir, we got it ready just as quick as we could.

Q. But you did want to complete it before the spring floods this spring, is that correct?

A. It is very essential.

The Court (Judge Williams): Was that an endeavor for the last year?

A. Yes sir, and we have been trying to get him to do it.



Q. You have a supervisory, or your firm, control as Chief Engineers over the Massman Construction work?

A. According to the contract.

The Court (Judge Williams): Who is that engineer? You are the engineer?

A. Yes sir.

The Court (Judge Williams): You don't have a subordinate?

A. I have a lot of them.

The Court (Judge Williams): And they are all working?

A. Yes, sir.

By Mr. Wheatley:

Q. I believe there was introduced in evidence a schedule prepared by you as a closure schedule?

A. Yes sir.

[fol.473] Q. By the Massman Construction Company showing various steps to be taken in the final closure of the dam across the river?

A. That is right.

Q. When was that submitted?

A. This last one on February 10, 1940.

Q. There was another closure schedule submitted prior to that?

A. Yes sir.

Q. Which was in October, 1939?

A. It was in the fall.

Q. In that closure schedule that was submitted in October 1939, did it indicate and show about when the contractor expected to close these openings?

A. Yes.

The Court (Judge Williams): What?

Mr. Wheatley: These temporary openings.

The Court (Judge Williams): Bring that date out now.

Mr. Wheatley: Your Honor, I can't bring it out as to date. I will clear it up with the next question.

The Court (Judge Williams): May be he can; may be he knows.

Mr. Wheatley: No.

The Court (Judge Williams): How do you know he don't know?

Mr. Wheatley: Because the date on which those openings would be closed would depend upon the progress of the construction of the other parts of the dam.

[fol. 474] The Court (Judge Williams): Go ahead.

Q. I will ask you this; the closing of these temporary openings, did that depend upon the progress of the construction of the arches?

A. Entirely.

Q. Now then what elevation or height did this closure schedule indicate, or plan for the arches to reach at which *them* they would proceed to close those openings?

A. Elevation 700.

Q. Now Mr. Holway, do you know on what date that arch No. 6, which was the last arch, reached an elevation of 700 feet?

A. It shows on that chart. It is between the 19th and 24th. I don't have the exact date on that. Just recently.

Q. I will ask you if it wasn't last Wednesday, or do you have an independent memory of that?

A. I am not sure of the exact date.

Q. Mr. Holway, take into consideration the fact or the condition of the dam when arch No. 6 reached 700, what in your opinion would be the effect of leaving or stopping the construction at that time? That is the effect of a flood through the temporary openings, and also a flood going over the tops of the arches?

A. I think I have already testified to that.

The Court (Judge Williams): Yes, he answered that. Mr. Wheatley: Yes sir.

Q. Take into consideration the progress of the construction [fol. 475] of the dam at this time and the operation of the arches, what would be the probable effect in damages if work stopped at this time?

A. It would be more serious in my opinion now than it would have if you had stopped at elevation 700.

Q. Why?

A. Because the water would be falling from a greater height.

Q. Where is the power house located with reference to the dam?

A. The power house is immediately below the dam against the west bluff of the old river channel.

Q. What would be the probable effects to it at this stage of the structure of a flood?

A. It is rather difficult to determine. The foundation of the power house are safer than the buttresses, and it would take a lot of punishment to do any damage to the power house.

Mr. Wheatley: That is all.

Mr. Cobb: One further question, Mr. Holway.

Recross-examination.

By Mr. Cobb:

Q. What instrument is it that provides these temporary openings were to be closed when the dam reached a height of 700 feet elevation?

A. The closure schedule submitted by the contractor.

Q. That was his plan and you approved it?

A. Yes sir. We didn't approve it as to time, we approved it he could close those openings when the arches were at a certain level.

[fol. 476] Q. Now when did he submit that sort of a plan to you for your approval?

A. He submitted several at various times. One back in the fall of 1939. He submitted this one on February 10, 1940.

Q. That is the last one?

A. Yes, sir.

Q. And that is the one that provided when the arches reach 700 foot elevation the six openings should be closed?

A. Provided the penstocks and penstock supports were in place.

The Court (Judge Williams): Was that in the one in October?

A. No, it is a little different.

Q. Then the Grand River Dam Authority has known since last fall that when the dam reached the height of 700 feet elevation, that these six openings at the bottom of the dam would be closed?

A. Yes sir, that is correct.

Mr. Cobb: That is all.

(Witness excused.)

The Court (Judge Williams): Very well. Mr. Holway, who was the Chief Engineer on the Spavinaw project?

Mr. Holway: I was.

The Court (Judge Williams): Then you visited about a week before me, didn't you?

Mr. Holway: It was more than a week.

[fol. 477] L. J. SVERDRUP, called as a witness on behalf of the complainant, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct examination.

By Mr. Wiener:

Q. State your name, your residence, and your occupation, please?

A. My name is L. J. Sverdrup, St. Louis, Missouri; occupation Consulting Engineer.

Q. Have you any connection in a supervisory capacity with the Grand River Dam Authority, and if so, what?

A. Our firm is retained by the Massman Construction Company as consulting engineers on this project.

Q. Will you state your engineering experience with reference to the designing and constructing of large dams?

A. Our firm has acted as consultants on several dams, Fort Peck, Passamaquoddy.

The Court (Judge Williams): That is in Maine?

A. Maine.

[fol. 478] The Court (Judge Williams): Never got through that one?

A. It never was built. The Hanson dam.

The Court (Judge Williams): Where is the Hanson dam?

A. Los Angeles County, and at the present time on the Denison dam.

Q. The Denison dam is here in Oklahoma?

A. Between Oklahoma and Texas, yes sir.

Q. Are you familiar with the Grand River Dam project?

A. Yes sir.



Q. In your opinion what is the result to be anticipated if work on the Grand River Dam project were to stop today?

A. If it were stopped now and the only opening being the sluice gates, the actual damage is so manifold that I would like to ask one question from you. Do you have reference to the damage to the structure, or damage to all parties concerned?

Q. First let's have the damage to the structure?

A. If a very large flood come down, and I don't mean by that a flood not of record, I mean floods such as have passed down Grand River before, and the water went over the arches, and I don't mean by that only over arch 6, but there are several other arches at the present time that are below elevation 730, bearing in mind that the low point in the arches is immediately adjacent to the buttresses and not at the center, it would mean the water would be pouring down right next to the buttress, and with that driving impact would in my opinion undermine undoubtedly the buttresses, and as a result the buttresses would tipple over, [fol. 479] the arches would fail, and a tremendous amount of water let loose down the valley, and in so doing undoubtedly other buttresses would go out as well, so I would estimate a large section of the dam stood a chance of going out.

Q. Now what would be the damage to the parties concerned in the project in that event?

A. Well, in so far as the Authority is concerned, it is quite obvious they would have a great deal of money expended for a dam and would not have a dam. They would have a structure that would be ruined, and to put out additional money to replace it, I don't know, of course. So far as P. W. A. is concerned, they would have a large portfolio of worthless bonds. And in so far as power is concerned, it couldn't be generated at all.

Q. How about the contractor?

A. The contractor, if he stopped right now, is certainly in as bad position as any one. In the first place he has a bond in the amount of \$10,000,000.00 up on this job, which incidentally is the largest bond ever written. As long as that is in force I would say the contractor is not in position to go and bid another large job, because any firm's bonding capacity is limited. Secondly, if it went out, or it was stopped, I mean, at the present time the contractor's equipment would be tied up on the job, and there is a tremendous

amount of equipment down there that could not be used elsewhere. The attitude of the surety companies behind it would be questionable; you don't know what attitude [fol. 480] they would take in regard to the bond. And in addition to that the contractor has at the present time in the neighborhood of \$900,000.00 retained percentage on the job which he would not get, and naturally that would impair his financial ability tremendously; interest would keep right on going on on the investment, and I am frank to say that I don't know enough about the financial standing of the Massman Construction Company to know whether it would absolutely ruin them or not, but it would certainly be more than the ordinary company could afford to take.

—Mr. Wiener: I think that is all of the questions I have, Your Honor.

Cross-examination.

By Mr. Cobb:

Q. Will you kindly state again just what your capacity is with the dam?

A. We are consulting engineers for the Massman Construction Company.

The Court (Judge Williams): The contractor?

A. Yes sir.

Q. How long have you been on this project with the Massman Construction Company?

A. I think since June, 1939, as I recall it.

Q. Are you familiar now with the stage at which the dam, the completion of the dam is in now?

A. Yes sir.

[fol. 481] Q. Will you state to the court just how near completed the dam is?

A. You mean the entire project in so far as the Massman Construction Company is concerned?

Q. Yes.

A. That is contract No. 7. It is about 92 per cent complete.

Q. What remains to be done?

A. At the present time under that contract remains, I

think, 32 piers in so far as arches are concerned, and some of the buttresses have to be topped out; the roadway on top, and certain items in the power house.

Q. You are constructing the roadway on top of the dam?

A. Yes sir.

The Court (Judge Williams): What is the width of that roadway, that would be the concrete?

A. The concrete, yes sir.

The Court (Judge Williams): What would be the width of it?

A. I think it is 22 feet.

Q. Did you recommend to the Massman Construction Company the closing of the five temporary openings at the foot of the dam?

A. Yes sir.

Q. And when did you make that recommendation?

A. Well, quite a long time ago. I was the one in cooperation with Mr. Stoll, the contractor's engineer on the job, worked out the closing schedule and submitted it to Mr. Holway for his approval. The first one I actually worked out was in October of last year, and as Mr. Holway [fol. 482] stated we never had any definite time when to be closed because it was all tied up with the progress of the work. We had, as a matter of fact, hoped to close it prior to time we actually did, but the cold weather of last winter delayed it. The whole fact being we naturally wanted to close as rapidly as possible in order that any dangers from the river behind us would be avoided. We knew when we arrived at elevation 700 we could keep ahead of any water we might have.

Q. Were you able to estimate at about the time that you would arrive at the 700 foot level?

A. We were except for the weather we had this winter, yes sir, and during that cold weather we made very little progress, and we had originally thought that it would be the first of March. As I recall we made the schedule in October that the openings would be closed the first of March, at that time would arrive at elevation 700 on arch 6.

Q. Is there any practical way now of working on this dam so as to carry off the ordinary flow in the river?

A. No sir, the only way the water can get out now is through the sluice gate.

Q. Is that the only temporary gate left at the bottom of one of the arches?

A. Yes sir.

Mr. Cobb: I believe that is all.

The Court, (Judge Williams): Anybody else want to ask him?

Mr. Wheatley: Yes sir, I do.

[fol. 483] Examination.

By Mr. Wheatley:

Q. Do you have any knowledge as to the number of employees the Massman Construction Company has at this time?

A. At the present time about a thousand employees out there.

Q. Do they have any supervisory laborers over them?

A. Yes sir.

Q. When you say a thousand you refer to the average laborers?

A. Yes sir.

Q. Do you have some idea as to the supervisory overhead they have with reference to foremen, engineers, draftsmen?

A. There are about a hundred foremen out there in addition to that, and I don't recall the number of superintendents.

Q. Mr. Syerdrup, do you have an opinion—have you made any investigation to determine about what the daily overhead would be in the event the Massman Construction Company would shut down, taking into consideration the reasonable value of the equipment that would be idle, interest on money, their supervisory expenses, and any other item that might be pertinent to their cost of keeping their organization together?

A. No sir. We started that but it has never been completed.

Q. Would you say whether or not it would be very heavy?

A. It would be very large.

Mr. Wheatley: I believe that is all.

Mr. Wiener: No further questions.

(Witness excused.)



[fol. 484] JOHN MICHAEL CARMODY, called as a witness on behalf of the complainant, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct examination.

By Mr. Wiener:

Q. State your name, please, and official position?

A. John Michael Carmody; I am Administrator for the Federal Works Administration.

Q. And since when have you held that position?

A. July 1, 1939, by appointment from the President.

Q. What is included in the Federal Works Agency, what combination of bureaus or administrations?

A. When the Congress passed reorganization plan No. 1, they brought together these agencies, some of which had been parts of other agencies, and some of which had been independent agencies. The Public Roads Administration, a bureau of the Department of Agriculture. The Public Buildings Administration, which builds buildings similar to this, was a part of the Procurement Division in the Treasury Department of the United States. Into that particular Building Administration there came also Building Management, which had been a part of the Department of the Interior. United States Housing Authority which had been a semi-independent agency of the Department of the Interior, with an Administrator appointed by the President and confirmed by the Senate for five years. The Works Project Administration, which had been an independent agency, and the Public Works Administration, which had been a semi-independent agency within the Department of the Interior under the Secretary of the Interior, Mr. Ickes as Administrator. Those groups were brought together and formed the Federal Works Agency.

Q. And you are now the Federal Works Administrator?

A. I am. I was Administrator for the Rural Electric Administration, an independent agency, appointment by the President, confirmed by the Senate.

Q. How long did you hold that position?

A. About three years.

Q. That agency, that is the Rural Electrification Bureau, made loans for the purposes expressed in its passage?

A. Approximately \$250,000,000.00 in loans were made while I was Administrator.

A. Any requirement of law they are self liquidating?

A. There was.

Q. So when you came to be Administrator you had had considerable experience with self liquidating loans?

A. I had.

Q. And you had had experience with money appropriated by Congress?

A. I had, and I had come to Oklahoma and had called a meeting of the lawyers and directors of a large number of [fol. 486] Oklahoma purchasers, to point out to them this business of not turning the money back was hokey. When we lent the money it was with the understanding it would be returned. And that was only one of several meetings I held.

Q. Were you successful in that purpose?

A. Yes sir.

Q. When you became Federal Works Administrator did there come to your attention the P. W. A. allotment to the Grand River Dam Authority?

A. Yes sir.

Q. Now sometime after that came to your attention did you have a conference with Governor Phillips of Oklahoma?

A. Yes sir.

Q. Where was that conference, when, and who was present?

A. Well, the conference was in my office in the North Interior Building in Washington. The Governor brought with him a young man whose name escapes my memory at the moment. I asked Dr. Clark Foreman to come to my office when I knew the Governor was coming.

Q. Who is Dr. Foreman?

A. Dr. Foreman is head of the Power Division of P. W. A.

Q. What did the Governor say at that conference?

A. Well, the Governor brought along with him a large map showing the location of the Grand River dam, and also some of the roads within the basin, and other roads in the [fol. 487] general territory. I am not sure that I looked at it in such detail to know precisely what roads were shown, but he did show me that map, of which incident he sent me a copy a few days later at my request. The purpose of his meeting, like the purpose of most people who come to my office, to get money. It is a very common thing, whether

they are public officials, State officials or Federal officials, because they like to get some P. W. A. money to prosecute their own projects. He talked about these roads and about the amount of money that would be required to replace the roads, and I gathered from him that it was his understanding that there had been no agreement about these roads, because as I recall it now he suggested that I refer the matter to my General Counsel, naming him by name, Alan Johnstone. It was his view he would advise me as a matter of law we were required to produce this money.

Q. Now did the Governor at that conference make any specific request of you with reference to these highways and this money?

A. I am not conscious he made any specific request. He may even have named an amount, but as I say, most of my business is listening to people asking for money, and it doesn't make a very great impression on me. The thing that did impress me was that he talked about having this determined as a matter of fact and as a matter of law. I think in fairness to him I ought to say, in my office he made no threats; he was as much of a gentleman as anybody who ever came to my office.

Q. Now did you after that conference submit the question [fol. 488] to your legal staff?

A. I did.

Q. And after submitting that question to your legal staff what steps did you take?

A. Well, my legal staff advised me that the Authority had made an agreement with the State Highway Commission whereby if the Authority built a certain bridge known as the Grove bridge, they would do it in liquidation of any other—

Mr. Dudley: If the court please we object to that statement of the witness as to what the legal authority was for the reason it is incompetent, irrelevant and immaterial, and in no sense binding on the Governor, or any defendant here.

Mr. Wiener: I am just offering it to show the course of events.

The Court (Judge Williams): I am not so sure. If they made that agreement and built the bridge as a consideration, I am not so sure about it.

Mr. Dudley: The point I was raising, that he would say his legal advisor told him when the agreement was made.

The Court: It isn't offered for that, I understand. For that purpose, as an inducement, or preliminary, I will permit it.

Mr. Wiener: Yes, Your Honor.

By Mr. Wiener:

Q. Had you finished your answer, Mr. Carmody?

A. On that point I think I had.

The Court (Judge Williams): That is already in, and [fol. 489] they objected — it.

Q. Now subsequent to that conference and that advice, did you have a conference with the members of the Authority?

The Court (Judge Williams): Now that is an inducement to show why he didn't follow the matter further. Only for that purpose, not as positive evidence. That is a fact to show that he assumed that by taking up with them what he told him.

Mr. Wiener: And I may say, I didn't propose at this hearing to go into the merits of that question at all, because I don't conceive it to be within the issues being heard here this afternoon.

Q. Now subsequent to that conference with Governor Phillips did you have a conference with the members of the Board of Directors of the Grand River Dam Authority?

A. Yes sir.

Q. Approximately when, Mr. Carmody?

A. Oh, it was sometime after the middle of February. I don't have the date in mind. Days are pretty full of business. I make no notes. Perhaps about the 20th or 22nd, or thereabouts.

Q. Who was present at that conference and what was said in general?

A. As I remember it —

Mr. Dudley: Now, if the court please, we object to what was said at this conference, not being binding on the Governor and Attorney General, and the other individual defendants here.

Mr. Wiener: I am offering it only as against the Authority.

[fol. 490] The Court (Judge Williams): Now this is being



tried before the court, and it is an equity case. If it ain't competent we will not consider it, and I will permit it in for the present.

Mr. Wiener: I am offering it against the Authority to show the sequence of events.

Q. Will you continue, please, Mr. Carmody?

A. Ray McNaughton was there, and we met the other members of the Board. I see Mr. Duncan over there, and I see Mr. Colley, and Mr. Ledbetter, and I think one other man from the Commission.

Q. Would that be Mr. Eichenberger?

A. Yes sir, Eichenberger. I think Dr. Foreman was there; Alan Johnstone, my own general counsel; I am not sure about the others; I don't have a memorandum of that.

Q. Now in general what was said there, briefly?

Mr. Dudley: Now, if the court please, we want to make this particular objection here, if they are offering this testimony as binding upon anybody except the parties participating in it.

Mr. Wiener: Well, I am not.

The Court. (Judge Williams): We will pass on it later. If it isn't competent no damage done.

Mr. Dudley: I understood counsel to say just now he is not going to present the question whether there was a contract between the Authority and the Highway Commission.

Mr. Wiener: Not at this hearing, because I don't think it [fol: 491] is within the issues.

Mr. Dudley: I agree with that.

A. Perhaps my office is subject to some criticism for this. When these gentleman came in I thought we were having a social visit, and I opened the conference on that basis, and thought we would have a visit and they would go about their business and I would go back to work, which I had a great deal to do at the time, but I discovered as we went on with the conversation, which had to do with a request, it wasn't specially a request, they were feeling me out to see if they could get some more money to satisfy the Governor and his ire they didn't want to arouse.

Mr. Dudley: If the court please we want to object to the witness' remark. I don't think that is a recitation of the fact.

The Court. (Judge Williams): I will let it in. Go ahead. You have your exceptions.

A: When I discovered that they were after money, and after money for something, I thought much already had been done for them, I said I didn't know where they could get it. I didn't know under what guise it could be got; while I had no authority as a Federal Administrator just to give away money just because somebody asked it, or somebody was made because he couldn't get it; I said that. It is hard to get this money. We started in July or August preparing a budget and going before the Bureau.

Mr. Dudley: We object to the remark of the witness, not responsive. It is a voluntary statement.

[fol. 492] The Court (Judge Williams): Overruled.

Q. Now continue, Mr. Carmody. What was the contention on each side at this conference and the decision that was reached?

A. I tried to tell you what was going through my mind. You see the Congress criticises us bitterly if we handle these funds carelessly, and we have the general accounting office, so we have to be careful. You have got to know where it is going, and got to have authority under the statute, and under the advice of our counsel. I doubt if anything was accomplished except we had an agreeable talk all around, and I thought a frank one, and when they went home I had my own decision in respect to the matter as far as I could make into a letter that I wrote to the Chairman of the Authority. I also wrote the Governor.

The Court (Judge Williams): Get your letter now and get into that. This is merely an inducement, preliminary.

Mr. Wiener: Yes sir.

Q. I will ask you to identify that document?

A. That is a letter I wrote to the Authority.

Mr. Wiener: I offer this in evidence.

The Court (Judge Williams): Have it identified as an exhibit first.

Mr. Wiener: As Government's Exhibit No. 18. I don't imagine it is admissible against the Governor, but it is against the Authority.

Mr. Dudley: Do you offer it as against the Highway [fol. 493] Commission?

Mr. Wiener: No.

Mr. Dudley: It is all right with us then.

Q. And did you thereafter also write a letter to the Governor?

A. I did.

Q. Showing you Government's Exhibit No. 19, I will ask you to identify that?

A. That is the letter, or a copy of it.

Mr. Wiener: I offer this in evidence as against the Governor, and I don't imagine it is admissible against any other defendant.

Mr. Dudley: We have no objection.

The Court (Judge Williams): Exhibit 18 is admitted in evidence, and read. Exhibit 19 is admitted in evidence and read.

Mr. Wiener: Then I will offer at this time without further identification as Government's Exhibits No. 20 and No. 21 respectively, acknowledgments of Mr. McNaughton for the Authority, and by the Governor of the two preceding exhibits.

[fol. 494] Mr. Cobb: No objection.

The Court (Judge Williams): Exhibit 20 is admitted in evidence, and read. Exhibit 21 is admitted in evidence, and read.

By Mr. Wiener:

Q. What was the next communication that you had from the Grand River Dam Authority with reference to this question?

A. I don't recall anything after the letter of acknowledgment. There may be, but I don't recall.

Q. To refresh your recollection I show you Government's Exhibit No. 22 for identification?

A. I thank you. I do remember it now. Yes, this was signed by the new General Manager, Mr. Clonts, and attached to his letter was a set of resolutions passed by the Board making formal request for a certain amount of money. I recall that now.

Mr. Wiener: I offer this letter, Government's Exhibit No. 22, with the attached resolution, in evidence against the defendant Clonts, and the defendant Grand River Dam Authority. It is obviously not admissible against the Governor.

Mr. Davidson: We have no objection.

The Court (Judge Williams): Exhibit 22 identified, in-  
[fol. 495] troduced in evidence, and read.

Q. And did you thereafter reply to that letter?

A. Yes sir, I did.

Q. And showing you Government's Exhibit No. 23 for identification, I will ask you whether that is your reply?

A. That is.

Mr. Wiener: I offer this in evidence as Government's Exhibit No. 23 against Mr. Clonts, the defendant, and against the Grand River Dam Authority.

The Court (Judge Williams): Any objection.

Mr. Davidson: No objection.

The Court (Judge Williams): Exhibit 23 is identified, introduced, and read.

A. Perhaps I ought to explain to the court, I am not a lawyer, and my lawyers prepared a reply to the Authority. I tore it up and wrote my own letter. I thought we would understand each other better.

Q. What is Exhibit No. 23, your own composition?

A. Yes sir, one suggesting they get this matter adjusted quickly in court before the spring floods came. That was my own notion of the matter.

Q. The net result of your decision to summarize the result of the correspondence was what it amounted to?

A. I am not sure that I know.

Q. Well, perhaps my question is not clear. What was your [fol. 496] decision as to the request of the Board of Directors of the Grand River Dam Authority as expressed in their resolution asking for additional funds?

A. I told them I could find no authority in any record connected with this Grand River Dam Authority and their relationship to P. W. A. that warranted me giving a cent for any further road building. That the record showed we had paid that off by agreement.

Q. Now what would be the effect from the standpoint of the Public Works Administration of an additional advance



of funds in response to the request contained in the resolution?

A. Well, if I may express my judgment how, which I have to use every day as Administrator with respect to original allotments as well as additions, I would say this. That when people come to the Government for money, think they got a pretty fine project themselves going, two things will make it a success. That applies to Rural Electrification or building of dams, the lowest possible cost consistent with the requirements of the project. No. 2, the most frugal management from the beginning of that project right straight through to the end of it, and my notion is that I ought not to encourage unwarranted cost by any people; the notion they can make mistakes and come in and get money to repair those mistakes.

Q. As a result of the various grant agreements, etc., all these documents introduced this morning, it is apparent that the P. W. A. exercised a strong control over expenditures by the Authority. Will you state why that is necessary or desirable from the standpoint of P. W. A.?

A. In the first place the Federal Government doesn't operate more freely with respect to these loans than the General Accounting Office, that is not responsible to the President but only to Congress, exercises over all of us all the time. That is No. 1. We are required to report to the General Accounting Office; they check all our expenses and vouchers; we are careful, therefore, to see the bureaus have their work in order, and their vouchers, and they make expenditures authorized under the statute itself or under the contract. That is No. 1. The other reason is this. As I said a moment ago there is no cream in any of these projects. If there were private investment would take care of them. So it is our business to see that the bonds are not impaired, and see that every step is taken we possibly can to return the money as was promised in the original contract. When you live under the white light of a Congressional investigation, and live in position to a great deal of this character of expenditure, you realize the need for prudence and careful attention to every detail, and every dollar that goes out.

Q. Are these stringent provisions of the loan and grant agreement and indenture giving P. W. A. control over the Authority's expenditures due to a desire on the part of

the Federal Government to dictate to the State of Oklahoma, or its agencies?

[fol. 498] A. I would say that in all of these relationships we are partners. When we forget we are partners we don't work successfully together. No, I don't think it is a question of dictation. The fact of the matter is Federal Administrator- handling these funds are paid by all of the citizens of the United States. Oklahomans contribute to my salary, and I have a responsibility to Oklahomans as well as I have to Minnesotans, or people from Washington, or Nevada, and with respect to making self liquidating projects successful.

Mr. Wiener: Cross-examine.

Cross-examination.

By Mr. Cobb:

Q. Mr. Carmody, as I understand, you testified that Governor Phillips had a conference with you about what date?

A. Well, I think it was in the early part of February. Early February 8th, I think that might be it. I am not sure but that seems to be about the time.

Q. This year or last year?

A. 1940.

Q. Is that the first contact that he had had with you with reference to this controversy?

A. Yes sir.

Q. Now then after that you had a conference with the Board of Directors of the Grand River Dam Authority?

A. Yes sir.

[fol. 499] Q. All members of the Board were present in your office?

A. Yes sir, they were.

Q. Do you remember about what day?

A. That was some days later. I thought it was only four or five days later, but it might have been later still than that, but it was after my conference with the Governor in February, 1940, a few days. I don't know how long.

Q. And at that meeting the Board of Directors of the Grand River Dam Authority was asking for more money for the purpose of paying the cost of reconstruction of the highways?

A. Apparently there had been conferences between them and the other members of the P. W. A. staff. I don't know how many conferences they had, or how many days they had been there. As a matter of fact I hadn't gone into that detail. I had been told it was settled, and so far as I was concerned it was settled in my mind. I wasn't expecting to see them, however I was glad to see them.

Q. What they were asking was a grant?

A. That was my understanding. I think they were trying to find out how much money they could get, and they didn't care what kind of money it was. That was my impression.

Q. Did you ascertain whether or not the highways had been reconstructed in the Dam area, reservoir area?

A. I understood that they had not been, and to tell the truth I was very much surprised to find that the original arrangement I understood to be pending, had taken place [fol. 500] almost two years ago, and nobody had done anything about that kind of highways. I don't like that kind of negligence. I don't know who is responsible, but I don't think that is good business. Somehow or other they should have been built.

The Court (Judge Williams): Now in this correspondence here where he writes to the Dam Authority, Chairman of it, he encloses a copy of the letter to the Governor, and then he writes to the Governor, sets out these matters, and he sends a copy of that letter to the members of the Dam Authority. So that shows it is reduced to writing what his understanding of what they were trying to do. This correspondence shows.

A. May it please the court, I was trying to finally expedite the matter.

The Court (Judge Williams): This is set out in correspondence. His attitude and what they were trying to do. Copy of these letters were mailed to the Governor. This here shows that, and the notice shows copies mailed to each one of these.

Mr. Cobb: That is all with the witness.

Mr. Davidson: Your Honors, I would like to ask Mr. Carmody a few questions.

## Examination.

By Mr. Davidson:

Q. Mr. Carmody, the Board when they were in Washington on that occasion discussed with you also the securing [fol. 501] of more money for the Markham's Ferry and Fort Gibson dams?

A. That is right. I was surprised the Board didn't bring their General Counsel.

The Court (Judge Williams): I can't see how that is competent; they were after the Markham's Ferry and Fort Gibson business.

Mr. Davidson: That is it, Your Honor.

Q. That resolution that has been introduced here was brought to you by Mr. Clonts, the General Manager of the Authority, personally, was it not?

A. I don't recall that I saw him. If he says he delivered it to me personally I will accept his word for it. Sometimes they are delivered to a secretary in the outside office and sent to me. I can't tell you. So far as I am concerned it is immaterial.

Q. You do know, however, that Mr. Clonts was in Washington?

A. I heard he was and I was surprised. May be I wondered about running back and forth on a matter that had been settled. I was born on a poor farm in Pennsylvania—where we had to pick stones off of the fields and money was hard to get.

The Court (Judge Williams): This resolution seems to have gone in a letter written by Clonts. This correspondence shows this resolution was transmitted on March 4, 1940, and is signed Grand River Dam Authority by T. P. Clonts, General Manager, and this resolution shows it was adopted by the Board on March 4, 1940.

Mr. Davidson: As a matter of fact, Your Honor please, the letter was taken to Washington personally by Mr. Clonts.

[fol. 502] A. Did he say he delivered it to me?

The Court (Judge Williams): It don't make any difference.



A. I received the letter, and I may have got it from him, but I don't just recall at the moment.

Q. Now Mr. Carmody, it was after you received that resolution that you wrote the last letter to the Board which has been introduced in evidence here, wasn't it?

A. Yes sir.

Q. And that was your final answer to the efforts of the Authority to settle that controversy?

A. I thought it was. I told them, ought to be settled in court.

The Court (Judge Williams): This letter of February 23, 1940, by the witness to the Chairman of the Dam Authority, a copy of which was mailed to the Governor, and the correspondence shows contained this last clause. "You say the need is urgent because failure to close the dam before spring may not only cause a year's delay in generating power, but cause irreparable physical and financial damage. We shall be glad to help you in any way we can. You wanted a new general manager. I approved this request. You wanted an Oklahoman as general manager. I approved your choice. I cite this merely to indicate that to the degree I possess authority or responsibility in our relationship I want to go as far as a public official may go prudently to make your burdens of management light. I find no warrant in the record for repudiating the original agreement or for [fol. 503] giving away or promising to give away Federal funds intrusted to me as Administrator. It seems to me in view of your previous agreement you should move promptly either to get the Governor and his Highway Commission to ratify the agreement you relied on, or ask the courts for relief. Sincerely, John M. Carmody, Administrator."

So all this is set out in the correspondence.

Mr. Davidson: Your Honor please, may I make this statement. That the Authority has contended at all times that they settled this controversy with the State by building the Grove bridge, and when the Governor wouldn't accept it, they made an additional claim, the Authority in order to compromise the matter has endeavored to get the Governor to agree.

The Court (Judge Williams): Then when he wouldn't they thought they would get another grant.

Mr. Davidson (Judge Williams): When the Governor

wouldn't agree to that the Board called the authorities in Washington to see if they could get more money out of which they could settle.

The Court (Judge Murrah): You found out there wasn't any more money.

Mr. Davidson: We found out they wouldn't advance any more.

The Court (Judge Kennamer): Is there any controversy?

Mr. Davidson: The controversy is that the agreement that was made was invalid.

The Court (Judge Kennamer): I am asking, was the [fol. 504] agreement in fact made?

Mr. Davidson: Yes sir.

Mr. Dudley: I don't know who he is making that statement on behalf of.

The Court (Judge Williams): That is not in issue. We understand that.

Mr. Davidson: I don't claim we have had any agreement at all with the present Highway Commission, but the members of the old Highway Commission.

The Court (Judge Williams): It is competent against the Governor on the issue of ordering out the National Guard. It is competent for that.

Mr. Dudley: If the court please, I don't want this record to show that we are silently admitting, that the present Highway Commission admits other than they had a contract made between the old Highway Commission and the Authority. We don't admit that.

The Court (Judge Williams): In fact if it was admitted, then their contention is it was made, but the effect of your contention is it was void on the grounds of public policy.

Mr. Dudley: We have other reasons besides that.

The Court (Judge Williams): Do you want to ask this witness any further questions?

Mr. Davidson: No sir.

(Witness excused.)

[fol. 505] The Court (Judge Williams): If you have another witness call him.

Mr. Mauzy: Your Honors please, that is all the evidence on behalf of the Government. The Government rests.

Mr. Wheatley: If the court please, there is certain evidence the Massman Construction Company would like to introduce. I think the contract is already in evidence.

The Court (Judge Williams): You will be permitted to do that. You have your contract in here.

Mr. Wheatley: No, it isn't in evidence, Your Honor.

[fol. 506] Mr. Wheatley: If the court please, I presume everybody will admit that this is a copy, it is not an executed copy, of the contract. Will other counsel admit that this is a copy of the contract?

Mr. Martin: If Mr. Wheatley says it is we will admit it.

The Court (Judge Williams): Now it is agreed that is a copy of the Massman contract. Now identify that as Exhibit No. 1 on the part of the Massman Construction Company.

Mr. Wheatley: Yes sir.

The Court (Judge Williams): Exhibit 1 on the part of the Massman Construction Company, it being agreed it is a copy of the original contract by all parties here, and it is admitted and read.

Mr. Wheatley: Yes sir. There is one other bit of evidence, [fol. 507] which is the resolution passed by the Grand River Dam Authority under date of the 14th of March, 1940, calling upon the Massman Construction Company to comply with every detail of its contract, and to take action necessary to get rid of the Guard.

The Court (Judge Williams): Let it be identified as an exhibit.

Mr. Wheatley: We offer in evidence Exhibit No. 2 of the Massman Construction Company.

The Court (Judge Williams): Now it is introduced and considered read.

[fol. 508] VAN T. MOON, called as a witness on behalf of the defendants, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct examination.

By Mr. Cobb:

Q. Will you state your name?

A. Van T. Moon.

[fol: 509] Q. Where do you live, Mr. Moon?

A. Oklahoma City.

Q. And do you hold any official position with the State of Oklahoma?

A. Yes sir.

The Court (Judge Williams): We will have an understanding now. You come in here now to prove about these roads. That will make it competent for them to introduce evidence here as to the settlement. You understand that issue will be made? You invoke the issue then. Then they invoke the issue.

Mr. Davidson: If Your Honor please, may I make this suggestion?

The Court (Judge Williams): Yes.

Mr. Davidson: That the parties all stipulate that the Authority built the Grove bridge at an expenditure of \$359,000.00, and they allowed in settlement for their liability.

The Court (Judge Williams): I am just telling you. Now if the other side—your witnesses here. If you put the State Engineer and make proof about these roads, and their theory about this, then so far as I am concerned I will vote to hear the evidence of the settlement. When you do that you invoke the issue.

Mr. Cobb: At this time I withdraw the witness.

Mr. Davidson: I think it will be well for us all to stipulate that the controversy exists over that settlement.

The Court (Judge Williams): I know, but they objected to that.

[fol: 510] Mr. Davidson: Yes sir.

The Court (Judge Williams): And these letters show it anyhow.

Mr. Davidson: That is true, except they don't show what the Grove bridge cost.

The Court (Judge Williams): \$350,000.00 is in here?

Mr. Davidson: Maybe it is.

The Court (Judge Murrah): If they want to invoke that issue.



The Court (Judge Williams): We are ready to hear anything where we can look in the face of the witness, if it takes a week, but we are not going to have these ex parte affidavits filed in a regular hearing. It is not competent, except where application is filed in court before the trial begins, and sometimes affidavits are permitted.

Mr. Davidson: I think, if Your Honor please, it is premature to go into that question now.

The Court (Judge Williams): It would be unless they make the issue.

Mr. Davidson: That is right.

The Court (Judge Williams): And I wanted to be fair with them as to what they were doing and what would happen.

Mr. Davidson: Now we have our witnesses all here to go into that if it is necessary to go into it.

The Court (Judge Williams): Yes, but I didn't know but [fol. 511.] what they might release them. Now if you have any witnesses you want to introduce.

Mr. Cobb: We have withdrawn this witness. The Attorney General and special counsel representing the defendants do admit there is a controversy over the question of whether or not there has been a settlement.

The Court (Judge Williams): The settlement from the construction of what is known as the Grove bridge for an estimated amount of \$350,000.00.

Mr. Davidson: \$369,000.00.

The Court (Judge Williams): \$369,000.00 in liquidation for any claim for the re-location of roads.

Mr. Cobb: Yes sir, and the defendants contend that controversy should be tried out in a State court.

The Court (Judge Williams): Well, we are ready to hear that now. They got counter-claims for a declaratory law. They have that pleaded in this case, but if you are just going to try it on a temporary injunction we cannot try this declaration. Now I will tell you, I was a Trial Judge for eighteen years in the District Court, and when I saw a man he was afraid of the District Court, I scanned his case from then on. I figured he must be doubtful of his case and on a skeptical case he couldn't win in there. Everybody knows that and I am not ashamed of it. I am proud I talk that way. I have heard these fellows say they wouldn't try a case in my court. Well, if they didn't try them I didn't

have the burden of trying them. Now none of these defend-  
[fol. 512] ants have taken the witness stand. I call your  
attention to that, and I want the record to show that.

S. H. SINGLETON, called as a witness on behalf of the de-  
fendants, and being first duly sworn and examined at the  
time and place above mentioned, testified as follows:

Direct examination.

By Mr. Cobb:

Q. Have you been sworn, Mr. Singleton?

A. Yes sir, just now.

Q. State your name?

A. S. H. Singleton.

Q. Where do you live?

[fol. 513] A. Oklahoma City, Oklahoma.

Q. Do you hold any official capacity with the State High-  
way Commission of the State of Oklahoma?

A. Chairman of the State Highway Commission.

Q. Now will you state to this court whether or not you  
had any conference or made any agreement with the Grand  
River Dam Authority, or its Board of Directors, of any  
member thereof, with reference to the filing of this law suit  
in the State court, State of Oklahoma ex rel. the Governor  
of the State, and the State Highway Commission vs. The  
Grand River Dam Authority, et al., No. 15,174 in the Dis-  
trict Court of Ottawa County?

A. I did not.

Q. Is that a friendly law suit?

The Court (Judge Williams): He says he didn't have any  
agreement with them.

Mr. Cobb: All right, that is all.

Mr. Wiener: No cross examination.

(Witness excused.)

RAY McNAUGHTON, called as a witness on behalf of the defendants, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct examination.

By Mr. Cobb:

[fol. 514] Q. Will you state your name?

A. Ray McNaughton.

Q. Where do you live?

A. Miami, Oklahoma.

Q. Do you hold any official position with the Grand River Dam Authority of the State of Oklahoma?

A. Member of the Board of Directors and Chairman.

Q. Mr. McNaughton, do you have any information about the case pending in the State court in Ottawa County styled, State of Oklahoma ex rel. the Governor, and the State Highway Commission, vs. Grand River Dam Authority, yourself and other defendants?

A. I have information that a restraining order was served on me.

Q. You know that case was filed?

A. Yes sir.

Q. Did you have any agreement with any one, the State Highway Commission or the Governor, that such an action would be filed?

A. I did not.

Q. Is that an adversary proceeding?

Mr. Wiener: I object to that as a conclusion.

Q. You have had no agreement with any one?

Mr. Mauzy: We don't plead a collusion. We plead one part of the State is suing another part.

The Court (Judge Williams): That is right. But if they are going to do that, that would make it a greater reason why the Federal Court should take jurisdiction. If two branches of the State government, when the issues would [fol. 515] effect the bond holders, get together and agree you file it in the State court, that by itself would justify a finding of collusion.

By Mr. Cobb:

Q. Mr. McNaughton, did the Board of Directors of the Grand River Dam Authority instruct its counsel, Mr. Davidson, to defend that law suit?

A. Yes sir.

Q. Did the Board of Directors do that in good faith?

A. It certainly did.

Mr. Cobb: That is all.

Cross-examination.

By Mr. Mauzy:

Q. Mr. McNaughton, did the Board instruct the counsel not to remove it to the Federal Court?

A. They did, yes sir.

Mr. Mauzy: That is all.

The Court (Judge Williams): That will support a finding of collusion. That is a greater reason, going and entering an appearance and then not removing it to the Federal Court.

Redirect examination.

By Mr. Martin:

Q. Was it a removable case, Mr. McNaughton?

A. Not so far as the Grand River Dam Authority is concerned.

Q. You are a lawyer, aren't you?

A. I practice a little.

[fol. 516] The Court (Judge Williams): I don't know about that. It might show what kind of a lawyer he is.

Mr. Martin: That is all.

(Witness excused.)

MAC Q. WILLIAMSON, called as a witness on behalf of the defendants, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

The Court (Judge Williams): Yes, where they operate under a Federal license, and the dam is located on a stream that flat boats used to go up on it, and is now a close tributary to a navigable stream, if I was a District Judge I would sustain jurisdiction, if the matter was removed to



my court. So when you go to prove by lawyers I just wonder if they have studied it.

Direct examination.

By Mr. Cobb:

Q. Will you state your name?

A. Mac Q. Williamson.

Q. Where do you live, Mr. Williamson?

A. Oklahoma City now.

Q. What official position do you hold with the State of Oklahoma?

A. Attorney General of the State of Oklahoma.

Q. Did you on behalf of the State ex rel Governor and [fol. 517] the State Highway Commission, vs. The Grand River Dam Authority, et al., No. 15,174 in the District Court of Ottoway County, bring that suit?

A. Caused it to be brought, yes sir.

Q. Will you tell the court—

The Court (Judge Williams): Were you instructed to bring it?

A. That is correct. I was directed by the Governor.

The Court (Judge Williams): Now would you under the law have the right to bring the suit without direction of the Governor?

A. As I understand the law, no, Judge.

The Court (Judge Williams): Very well.

Q. Were you also authorized by the State Highway Commission, as a relator, to bring that suit?

A. That is correct. I have such a letter from them.

Q. Do you know of any agreement with the Grand River Dam Authority, its Board of Directors, or any of its officers, whereby that law suit was to be a friendly law suit?

A. Never heard of any such suggestion. In fact within my personal knowledge they knew nothing about the fact I was about to file it.

Q. And did you intend to have that law suit in the District Court prosecuted in good faith?

A. Yes, sir.

Mr. Cobb: That is all.

The Court (Judge Williams): Any further questions?

[fol. 518] Cross-examination.

By Mr. Wiener:

Q. Mr. Williamson, did you as Attorney General of the State of Oklahoma advise the Governor of the State of Oklahoma to declare martial law at the Grand River dam site?

Mr. Dudley: We object as incompetent, irrelevant and immaterial on behalf of the Governor.

The Court (Judge Williams): I will permit you to ask that question.

Mr. Dudley: Exceptions.

Q. (Question read by the Reporter) I think you can answer yes or no.

The Court (Judge Williams): He can answer any way he wants to, if he had any conversation.

A. It is rather difficult to answer that yes or no. The Governor, as I recall it, called me to his office on the 13th of March—

The Court (Judge Williams): What time?

A. I would say about 3:30 in the afternoon. For various reasons I asked Mr. Cobb and Mr. Hansen of my office, and who are veterans of many years in that office, to go with me. The three of us went to the Governor's office, and at that time he exhibited to me a draft of a proposed military order, Executive order. He asked me what I thought about it, and I told him.

The Court (Judge Williams): Now what did you tell him?

A. Judge, I read it as carefully as I could, and suggested that without in the slightest intention to tell him how to run his business, that I believed if I were issuing the order, and [fol. 519] felt that I had to issue the order, I believed that I would revise it striking all reference to martial law. That is in substance what I suggested, and I didn't even suggest that, I merely observed if I was running the business there.

The Court (Judge Kennamer): What did he have you down there for?

The Court (Judge Williams): What did he say to you when you told him that; when you made that observation?

A. Well, in fact he said all right, and then we proceeded to the discussion of this litigation. He wanted a law suit

brought, and we immediately started talking about this law suit. Whether or not we thought the court would have jurisdiction, who ought to be parties plaintiff and defendant, those usual things constituting frame work of proposed litigation.

The Court (Judge Williams): Was anything said in there about issuing the proclamation of martial law, and then bring a suit in a State court, and then if they didn't win in the State court they would continue the martial law?

A. I don't recall any such thing.

The Court (Judge Williams): You remember the newspapers carried the statement they would keep these soldiers at the dam until that case was heard? You remember that, don't you?

A. Judge, I may have seen that. I don't recall what rumors they did print.

The Court (Judge Williams): I am talking about in the press?

[fol. 520] A. All right, publicity then. May I make this observation along that line. It was my understanding in this discussion with the Governor that for reasons sufficient unto himself he thought he needed immediate restraint of action at the dam until such time at least as he could; seemed so determined to proceed to file a law suit to obtain court restraint. Now that in general was his position as I understood it.

Mr. Wiener: I have no further questions.

Re-direct examination.

By Mr. Dudley:

Q. You filed the law suit the next day, did you not?

A. Mr. Dudley, our conference with the Governor must have terminated around 4 or 4:30 in the afternoon of the 13th, and about three of us worked the most of the night, and the next morning two of the assistants in the office proceeded by car to Miami and the law suit was filed that next afternoon of the 14th of March, as I recall.

Mr. Dudley: That is all.

The Court (Judge Williams): Now was anything said about a conference being held the night before, discussing the question of martial law over that dam?

A. There was not to us.

The Court: In that conference up there?

A. No we were parties to that discussion.

Mr. Mauzy: I would like to ask one question. Mr. [fol. 521] Williamson, did the Governor tell you he was going to stop that work on the dam if these roads were not paid for?

A. No, I can't say he said that, Mr. Mauzy.

The Court (Judge Williams): Anybody else want to ask him any question?

A. I say he did express a desire to obtain what he said was the reasonable value of the roads.

Mr. Mauzy: And would stop the dam unless he got it?

A. I can't recall. He would stop everything unless he got it; he was moving toward that end.

Mr. Mauzy: That was the purpose of your conference?

A. I rather thought the purpose of our conference was whether or not we could file and maintain a law suit, largely. He showed me this military order and asked me what I thought about it, and then proceeded in the discussion of the law suit.

Mr. Mauzy: And the law suit was to stop operations on the dam?

A. The law suit was to stop operations up there which he considered inimicable to the state.

Mr. Mauzy: That is all.

The Court (Judge Murrah): You didn't ask for an adjustment?

A. No, I didn't, on the theory a court of equity would maintain jurisdiction to do justice.

(Witness excused.)

[fol. 522] MOTIONS TO DENY TEMPORARY INJUNCTION

Mr. Dudley: Well, at any rate, at this time comes now the defendant, Leon C. Phillips, individually, and moves the court to deny the application of the plaintiff for a temporary injunction for the reason that this court has no jurisdiction in the first place to grant the relief sought; and second, the evidence offered on behalf of the Government is insufficient to justify the granting of an application for a temporary injunction.

Now we would also like to make that same motion on be-



half of the defendants, Mac Q. Williamson, S. H. Singleton, George Meacham, H. E. Bailey, and Louis A. Ledbetter.

The Court (Judge Williams): Very well, let's get all of your motions in.

Mr. Dudley: Comes now the defendant, Leon C. Phillips, as Governor of the State of Oklahoma, and Mac Q. Williamson, as Attorney General of the State of Oklahoma, and Louis A. Ledbetter, as Adjutant General of the National Guard of the State of Oklahoma, and S. H. Singleton, George Meacham, and H. E. Bailey, as members of the Highway Commission of the State of Oklahoma, and jointly and severally move the court to deny the application of the plaintiff for a temporary injunction for the reasons, first, that this court has no jurisdiction over these movants, in that the action is an action against the State, and this court [fol. 523] has no jurisdiction to grant the injunction prayed for; second, that the evidence is insufficient to justify the granting of a temporary injunction.

Mr. Martin: Your Honor, may I supplement what Judge Dudley has said?

The Court (Judge Williams): I want to find out if there are any motions going to be made by other defendants.

Mr. Martin: It is the same defendants, in so far as I am concerned.

The Court (Judge Williams): Very well.

Mr. Martin: I would like to supplement Judge Dudley's motion, and on behalf of the same defendants on whose behalf he made the motion, I would like to supplement it by saying, even if the court has jurisdiction of this case, and the parties, the court has no power under Section 265 of the Judicial Code to restrain the State Court, and upon that additional ground we ask the temporary injunction be denied.

Mr. Davidson: Your Honors please, I want to make this suggestion to the court. The injunction should not go against the Authority, or its Board, or Manager, or Chief Engineer.

The Court (Judge Williams): Well, they filed an answer.

The Court (Judge Kennamer): Your position is the Authority has done nothing to interfere with the construction of the dam.

Mr. Davidson: Not a thing.

ORDER OVERRULING MOTIONS TO DENY TEMPORARY INJUNCTION

The Court (Judge Williams) : Now this court unanimously [fol. 524] overrules these motions. Now then do you want to answer? Do you want time to answer?

Mr. Dudley: Your Honor, may we have exceptions?

The Court (Judge Williams) : Yes, each one of you have exceptions. Now do you want to answer?

Mr. Dudley: Yes, sir, the defendants will answer within the statutory time.

The Court (Judge Williams) : What?

Mr. Dudley: We have twenty days from the date of the service of process, and we will answer within that time.

The Court (Judge Williams) : Now the court unanimously continues the injunction as granted in force until otherwise ordered by this court. In the meantime if anybody wants to file a brief to help the court make a finding of fact,—it is necessary to make a finding of fact under the new rules, and conclusions of law, and then we will carefully consider all these things.

[fol. 525] The Court (Judge Williams) : Well, we make an order continuing the temporary restraining order in effect until otherwise ordered by this court, and before we grant the temporary injunction we must make findings of fact and conclusions of law.

[fol. 526] The Court (Judge Williams) : The Judge couldn't issue a restraining order beyond ten days, but the three Judges can continue it until otherwise ordered by this court.

Mr. Wiener: I shouldn't think so, thought I think it would—

The Court (Judge Murrab) : But we can grant a temporary injunction.

The Court (Judge Williams) : Yes, and we can wait until we make findings of fact and conclusions of law. That limitation is on the Judge that issues the temporary restraining order, it cannot exceed ten days, but when the court assembles, where three Judges sit and have the power of a court, we are not limited by that ten days. That is the way I understand it. Now if there is any lawyer that thinks different, I will hear him on that now.

Mr. Dudley: Your Honor please, whatever may be the [fol. 527] power of the court in that regard, we are not going to raise any technical questions.

The Court (Judge Williams): I am sure you wouldn't.

Mr. Dudley: But I doubt, if Your Honor please, if you could extend the restraining order beyond ten days, except by consent, and we will not raise the question.

\* \* \* \* \*

The Court (Judge Williams): I will tell you what we can do. We can continue this case: We can do that as a three Judge court duly assembled, say to a certain day, and pending the continuance we can undoubtedly keep it in force. We can do that.

Mr. Dudley: You can just do anything you want to do. We are trying to put over to this court that we will not and do not want to take any advantage, and any plan the court works out will suit us.

The Court (Judge Williams): I will tell you what we could do. We could continue it until the 6th of May. I believe that is on Monday: that is the first Monday in May.

\* \* \* \* \*

[fol. 528] The Court (Judge Williams): If we can get ready before then we can serve notice and meet before then.

The order of this court will be, this case will be continued until May 6, 1940, at 10 o'clock A. M. in Tulsa, and in the meantime the restraining order heretofore issued will continue in effect.

\* \* \* \* \*

(Here follows 1 photolithograph, side folio 1.)

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**T. C.C.CHILDERS, Secretary of State of the State of Oklahoma,**  
do hereby certify that the following and hereto attached is a true copy of

DECLARING MARTIAL LAW

*the original of which is now on file and a matter of record in this office*

*Done at the City of Oklahoma City, this*

TWENTY-SECOND day of MARCH 1840.

C. C. Childers

SECRETARY OF STATE

Katherine Danton  
ASSY SECRETARY OF STATE

ASST SECRETARY OF STATE

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## [fol. 2] STATE OF OKLAHOMA, EXECUTIVE DEPARTMENT

## Executive Military Order Declaring Martial Law

"Whereas, a corporation known as the Grand River Dam Authority, through its officers, agents, employees, and servants, is constructing a dam across the Grand River in the vicinity hereinafter more specifically described, which will cause said river to back up and flood certain highways and bridges, the public property of the State of Oklahoma, to the irreparable injury of the State and in utter disregard of the rights of said State and its citizens, and said Grand River Dam Authority has refused to compensate or offer to compensate the State, or any municipal subdivision thereof, or to secure the State against loss and damages thus to be caused, and that by reason thereof, such an emergency exists that in order to prevent the damages so threatened and intended:

Now, Therefore, I, Leon C. Phillips, The Governor of the State of Oklahoma, by authority in me vested by Section 2 and 8 of Article 6 of the Constitution of the State of Oklahoma, and by other provisions of the Constitution, do hereby and hereon declare martial law on the area occupied by said Grand River Dam, more specifically described as the Southwest Quarter of Section 14, Township 23 North, Range 21 East, in Mayes County, Oklahoma; and Brigadier General Louis A. Ledbetter, The Adjutant General, is hereby authorized and directed to occupy the said zone with the military forces of the State, and to maintain the same with a unit or units of the National Guard, and to maintain such military control against all interference whatsoever, except on order otherwise by the superior executive power of the President of the United States; that he, the said Adjutant General, will stop all work on said Grand River Dam in said zone and will permit no one to enter or pass through said zone, except only the authorized representatives of the Governor, and the agents and military forces under his command as Adjutant General of the State of Oklahoma; that the military law hereinbefore declared and promulgated in said zone shall not extend into any other portion or section of the State except that hereinbefore [fol. 3] named; that he, the said Adjutant General, shall summon sufficient forces, upon receipt of this order, to take possession of, and define the boundaries of said zone under martial law, and exercise his military control, as herein designated.

Done, at the State Capitol, in the City of Oklahoma City, Oklahoma, on this the 13th day of March, A. D. 1940."

By the Governor of the State of Oklahoma, Leon C. Phillips, Commander-in-Chief. (Seal.)

Attest: C. C. Childers, Secretary of State. By: — —,  
Asst. Secretary of State.

2766

# Executive Military Order Declaring Martial Law

## Secretary's Memorandum

Oklahoma City, State of Oklahoma

## Secretary's Office

This instrument was filed for record this 13 day of March, A. D. 1940 at 5 o'clock P. M. Recorded in — Executive Record No. — at page —.

C. C. Childers, Secretary of State. By S. Bryan.

[fol. 4]

(Clerk's Note)

Government's Exhibit No. 2 is included in "Exhibit B" attached to the complaint.

Government's Exhibit No. 3 is included in "Exhibit B" attached to the complaint.

Government's Exhibit No. 5 is identical with "Exhibit A" attached to the complaint.

Government's Exhibit No. 6 is identical with "Exhibit C" attached to the complaint.

Government's Exhibit No. 11(c) is identical with Government's Exhibit 1.

Government's Exhibit No. 12(a) is identical with Government's Exhibit 11 (b).

Government's Exhibit No. 13 is identical with "Exhibit B" attached to the complaint.

Government's Exhibit No. 9, Aerial Photograph of the Grand River Dam Site, is not bound herein but is included as a part of this record and returned separately.

Government's Exhibit No. 10, Aerial Photograph of the Grand River Dam Site, is not bound herein but is included as a part of this record and returned separately.

[fol. 5]

## Government's Exhibit 4

The following pages are the only portion of Government's Exhibit requested by Counsel to be made a part of the record on appeal.



[fol. 6]

Grand River Dam Authority  
State of Oklahoma

Docket No. Okla. 1097-P-DS

August 22, 1939

Amount Authorized: \$12,500,000.

Amount Purchased:

Designation: Grand River Dam Authority 4% Revenue Bond.

Date of Bonds: April 1, 1938.

## Index to Bond Transcript

Pages	Documents
1-133	Copy of record submitted to Attorney General and Certificate and Opinion of Attorney General approving bonds.
134	Specimen Bond.
135-135a	Opinion of Counsel, dated May 25, 1939.
135b-135c	Opinion of Counsel, dated July 12, 1939.
135d-135f	Opinion of Counsel, dated August 18, 1939.
135g-135h	Opinion of Counsel, dated October 18, 1939.
135i-135j	Opinion of Counsel, dated January 15, 1940.
136-136a-136d	Certified copy of Senate Bill No. 139—An Act amending Section 6, Article 4, Chapter 70, Oklahoma Session Laws, 1935.
136e-136j	Certified copy of Senate Bill No. 653—An Act amending Section 10, Article 4, Chapter 70, Oklahoma Session Laws, 1935.
137-142	Certificate of Incumbency, together with Conformed Copy of By-Laws.
142a-142b	Supplemental Certificate of Incumbency.
143-149	Certified extracts from minutes of a call meeting of the Authority, held November 27, 1937, at which was adopted Resolution No. 6 (Bond Resolution) and at which form of Indenture was approved.
150-228	Certified copy of form of Indenture considered and approved at meeting of November 27, 1937.
229-232	Certified extracts from minutes of a special call meeting of the Authority, held December 29, 1937, at which was adopted Resolution No. 10—a resolution approving revised form of Indenture.
233-325	Certified copy of revised form of Indenture considered and approved at meeting of December 29, 1937.
326-327	Certified extracts from minutes of a regular meeting of the Board of Directors of the Authority, held May 2, 1938, showing adjournment to May 6, 1938.
328-329	Certified extracts from minutes of a recessed meeting of the Board of Directors of the Authority, held May 6, 1938, showing adjournment to May 10, 1938.
[fol. 7]	
330-334	Certified extracts from minutes of a recessed meeting of the Board of Directors of the Authority, held May 10, 1938, at which were adopted Resolution amending Sub-division Two (2) of Resolution No. 6 (Bond Resolution), and Resolution correcting and revising form of Indenture.
325-428	Certified copy of form of Indenture considered and approved at meeting of May 10, 1938.
429-522	Certified executed counterpart of Indenture, dated as of April 1, 1938, being identical with the copy of the Indenture submitted to the Attorney General.
523	Certificate of Secretary as to cancellation of incorrect Indenture.
23a-523b	Affidavit of Charles Rollin Larrabee re incorrect Indenture.
524-525	Affidavit of officers of the Authority and the Trustee Bank as to cancellation of incorrect Indenture.
526-528	Certified copy of Resolution No. 211 passed by the Board of Directors of the Authority as to cancellation of incorrect Indenture.

## Pages

## Documents

529-530

Certified copy of Resolution of Trustee Bank as to cancellation of incorrect Indenture.

531-538

Certified extracts from minutes of a special meeting of the Board of Directors of the Authority, held May 9, 1939, at which was adopted Resolution No. 240—a resolution awarding \$2,000,000 Bonds to the United States of America.

539-546

Certified extracts from minutes of regular meetings of the Board of Directors of the Authority, held June 5; June 6 and June 20, 1939, at which latter meeting was adopted Resolution No. 280—a resolution awarding \$2,000,000 Bonds to the United States of America.

547-556

Certified extracts from minutes of regular meetings of the Board of Directors of the Authority, held July 3, July 7, July 11 and July 14, 1939, at which was adopted Resolution No. 306—a resolution awarding \$3,000,000 Bonds to the United States of America.

557-562

Certified extracts from minutes of regular meetings of the Board of Directors of the Authority, held September 4 and September 5, 1939, at which was adopted Resolution No. 307—a resolution awarding \$3,000,000 Bonds to the United States of America.

563-566

Certified extracts from minutes of special meeting of the Board of Directors of the Authority, held November 7, 1939, at which was adopted Resolution No. 438—a resolution awarding \$1,563,000 Bonds to the United States of America.

567-568

No-Litigation Certificate.

fol. 8]

## First Requisition

569-570

Signature Affidavit of Former Secretary and Treasurer.

571-572

Certificate of State Auditor.

573

Opinion Regarding Outstanding Obligations.

574

Certificate of No Adverse Legislation.

575-576

Trustee's Signature Certificate.

577-578

Registration Affidavit of Former State Auditor.

579-580

Certificate of Attorney General of the State of Oklahoma.

581

Certificate as to Title to Real Property.

582-584

Signature and No-Litigation Certificate, dated May 23, 1939.

585

Financial Certificate, dated May 23, 1939.

586-587

Certificate of Delivery and Payment, dated May 23, 1939, \$2,000,000.

## Second Requisition

588-589

Signature Affidavit of Former Secretary and Treasurer.

590-591

Certificate of State Auditor.

592

Opinion Regarding Outstanding Obligations.

593-594

Trustee's Signature Certificate.

595-596

Registration Affidavit of Former State Auditor.

597-598

Certificate of Attorney General of the State of Oklahoma.

599

Certificate as to Title to Real Property.

600-602

Signature and No-Litigation Certificate, dated July 12, 1939.

603

Financial Certificate, dated July 12, 1939.

604-605

Certificate of Delivery and Payment, dated July 12, 1939, \$2,000,000.

## Third Requisition

606-607

Signature Affidavit of Former Secretary and Treasurer.

608-609

Certificate of State Auditor.

610

Opinion Regarding Outstanding Obligations.

611-612

Trustee's Signature Certificate.

613-614

Registration Affidavit of Former State Auditor.

615-616

Certificate of Attorney General of the State of Oklahoma.

617

Certificate as to Title to Real Property.

618-620

Signature and No-Litigation Certificate, dated August 18, 1939, (Exhibit B)

Pages	Documents
621-623	Signature and No-Litigation Certificate, dated August 18, 1939, (Exhibit B-2)
624	Financial Certificate, dated August 18, 1939.
625-626	Certificate of Delivery and Payment, dated August 18, 1939, \$3,000,000.

#### Fourth Requisition

627-628	Certificate of State Auditor.
629	Opinion Regarding Outstanding Obligations.
630-631	Trustee's Signature Certificate.
632-633	Registration Affidavit of Former State Auditor.
634-635	Certificate of Attorney General of the State of Oklahoma.
636	Certificate as to Title to Real Property.
637-639	Signature and No-Litigation Certificate, dated October 18, 1939, (Exhibit B)
640	Financial Certificate, dated October 18, 1939.
641-642	Certificate of Delivery and Payment, dated October 18, 1939, \$3,000,000.

#### Fifth Requisition

643-644	Signature Affidavit of Former Secretary and Treasurer.
645-646	Certificate of State Auditor.
647	Opinion Regarding Outstanding Obligations.
648-649	Trustee's Signature Certificate.
650-651	Registration Affidavit of Former State Auditor.
652-653	Certificate of Attorney General of the State of Oklahoma.
654	Certificate as to Title to Real Property.
655-658	Signature and No-Litigation Certificate, dated January 15, 1940.
659	Financial Certificate, dated January 15, 1940.
660-661	Certificate of Delivery and Payment, dated January 15, 1940, \$1,563,000.

[fol. 9] Certificate of the General Counsel for the Grand River Dam Authority as to the Regularity and Validity of the Proceedings for the Issuance of 4% Revenue Bonds of the Grand River Dam Authority in the Aggregate Principal Amount of \$12,500,000.

Vinita, Oklahoma, June 25, 1938.

#### To Whom It May Concern:

I, R. L. Davidson, General Counsel for the Grand River Dam Authority, a public corporation created and existing under the laws of the State of Oklahoma, do hereby certify that I have examined carefully Article 4 of Chapter 70 of the 1935 Session Laws of the State of Oklahoma, as amended by Articles 1 and 2 of Chapter 70 of the 1937 Session Laws of the State of Oklahoma creating and prescribing the powers of the Grand River Dam Authority; the decision of the Supreme Court of the State of Oklahoma in the case of Sheldon vs. Grand River Dam Authority, et al, 182 Okla. —; 76 Pac. 2nd 355, which sustains the constitutionality of Article 4 of Chapter 70 of the 1935 Session

Laws of the State of Oklahoma, as amended by Articles 1 and 2 of Chapter 70 of the 1937 Session Laws of the State of Oklahoma, and holds that the Grand River Dam Authority is authorized thereunder to issue its 4% Revenue Bonds in the aggregate principal amount of \$15,000,000; and all the proceedings of the Grand River Dam Authority, as shown by its official records authorizing the issuance of its 4% Revenue Bonds in the aggregate principal amount of \$12,500,000, in denominations of \$1,000, to bear date of April 1, 1938, with interest from date and maturing at intervals over a period of thirty-five (35) years, beginning April 1, 1943 and ending April 1, 1973; and also the form and text of the Bonds to be issued and the executed Trust Indenture securing payment of said Bonds, and that in my opinion all of said proceedings are regular and valid, and that the Grand River Dam Authority has lawful authority for the issuance of said Bonds in the amount, denomination, bearing interest and maturing as proposed, and secured by the Trust Indenture, which has been duly executed in the name of the Grand River Dam Authority by the proper officers of the Authority, and in the name of the First National Bank of Miami, Oklahoma, as Trustee, by its proper officers, and that said Bonds, when issued, will be valid and binding obligations of the Authority according to their tenor and terms, and will be lawfully secured by said Trust Indenture [fol. 10] according to its tenor and terms.

This 25th day of June, 1938.

(S.) R. L. Davidson, General Counsel, Grand River Dam Authority.

[fol. 11]

#### CERTIFICATION

STATE OF OKLAHOMA,

County of Craig, ss:

I, Owen L. Butler, as Secretary of the Grand River Dam Authority, a conservation and reclamation district and a public corporation, created and existing under the laws of the State of Oklahoma, do hereby certify:

1. That the Grand River Dam Authority is a public corporation and state instrumentality created, organized and existing under article 4 of Chapter 70 of the 1935 Session Laws of the State of Oklahoma, as amended by Articles 1 and 2 of Chapter 70 of the 1937 Session Laws of the State of Oklahoma, to which reference is hereby made, and



2. That the Grand River Dam Authority has been duly organized and has the right and authority under the laws of the State of Oklahoma to issue 4% Revenue Bonds of the Authority in the aggregate principal amount of \$15,000,000, as held by the Supreme Court of the State of Oklahoma in the case of Sheldon vs. Grand River Dam Authority, 182 Okla. —; 76 Pac. 2nd 355, to which decision of the Supreme Court reference is hereby made, and

3. That the Grand River Dam Authority has duly adopted a set of By-Laws for the management and regulation of its affairs, which are now and have been continuously since the 16th day of October, 1937, in full force and effect, and a certified copy of which is hereto attached, made a part hereof and identified as Exhibit "1", and

4. That at a special called meeting of the Board of Directors of the Grand River Dam Authority, held in the offices of the Authority in the City of Vinita, Oklahoma, on November 27, 1937, the Board of Directors of the Authority authorized, by resolution duly passed and adopted, the issuance by the Authority of 4% Revenue Bonds in the aggregate principal amount of \$12,500,000 in the denomination of \$1000 each, to bear date of October 1, 1937, bear interest from October 1, 1937, maturing at intervals over a period of thirty-five (35) years beginning October 1, 1942 and ending October 1, 1972, to be secured under a Trust Indenture, substantially in the form accompanying said resolution and identified as Exhibit "A". The minutes of said meeting of the Board, including copy of said resolution, duly certified by the Secretary of the Authority, is attached hereto as a part hereof and identified as Exhibit "2", and

[fol. 12] 5. That at a recessed regular meeting of the Board of Directors of the Grand River Dam Authority held in the offices of the Authority in the City of Vinita, Oklahoma, on the 10th day of May, 1938, the Board of Directors of the Authority, by resolution duly passed and adopted, amended Subdivision (2) of the resolution of the Board of Directors of the Grand River Dam Authority adopted on the 27th day of November, 1937, so as to provide that the Bonds to be issued under the authority of the resolution of November 27, 1937, should be dated April 1, 1938, and bear interest from April 1, 1938 and mature over a period of thirty-five years beginning on April 1, 1943 and ending on

April 1, 1973. A certified copy of the minutes of the said meeting of the Board of Directors of May 10, 1938, including a copy of said resolution, showing the adoption of said resolution is attached hereto and made a part hereof and marked for identification as Exhibit "3", and

6. That at the said recessed regular meeting of the Board of Directors of the Grand River Dam Authority held at the offices of the Authority in the City of Vinita, Oklahoma on the 10th day of May, 1938, the Board of Directors of the Authority, by resolution duly passed and adopted, corrected and revised the Indenture referred to in the resolution of the Board of Directors adopted on the 27th day of November, 1937 as Exhibit "A", in accordance with a form of Indenture accompanying said resolution and referred to therein and identified as Exhibit "Z", and approved said corrected and revised Indenture in said form and authorized the execution and delivery of said corrected and revised Indenture by the proper officers of the Authority. A certified copy of the minutes of said meeting of the Board of Directors on the 10th day of May, 1938, including a copy of said resolution, showing the adoption of said resolution correcting and revising the Indenture referred to in the resolution of the Board of Directors adopted on the 27th day of November, 1937, and identified as Exhibit "A", and approving said corrected and revised Indenture in the form submitted as Exhibit "Z", and authorizing the execution and delivery of said corrected and revised Indenture by the proper officers of the Authority, is attached hereto, made a part hereof and marked for identification as Exhibit "3", and

7. That pursuant to the authority of said resolution of the Board of Directors adopted at the meeting held on May 10, 1938, the said Trust Indenture in the form of Exhibit "Z" was executed in the name of the Authority by Ray [fol. 13] McNaughton as Chairman of the Board, and attested by Owen L. Butler, as Secretary, on the 10th day of May, 1938, and on the 11th day of May, 1938, the said Trust Indenture was executed in the name of The First National Bank of Miami, Oklahoma by Roy T. Wills as President, and attested by C. H. Mullendore as Cashier. A certified copy of said Trust Indenture as executed is attached hereto, made a part hereof and marked for identification Exhibit "4", and

8. That the attached certified copy of the form and text of the bonds to be issued under the resolution of November 27, 1937, as amended by the resolution of May 10, 1938, is a true and correct copy of the form and text of the bonds prescribed and set forth in the Trust Indenture, and is attached hereto, made a part hereof and marked for identification as Exhibit "5", and

9. That on the 3rd day of January, 1938, at a regular meeting of the Board of Directors held in the offices of the Authority in the City of Vinita, Oklahoma, officers of the Authority for the year 1938 were duly and regularly elected as follows: Ray McNaughton as Chairman of the Board of Directors; Geo. W. Schaefer as Vice-Chairman of the Board of Directors; Owen L. Butler as Treasurer of the Authority; Owen L. Butler as Secretary of the Authority, as shown by the minutes of said meeting of the Board of Directors, a certified copy of which is attached hereto, made a part hereof and marked for identification as Exhibit "6", and

10. That on and continuously since the 16th day of October, 1937, and at the present time, the Board of Directors of the Grand River Dam Authority was, has been and is composed of the following members:

Ray McNaughton—Chairman  
 Geo. W. Schaefer—Vice-Chairman  
 Owen L. Butler—Secretary-Treasurer  
 R. P. Colley  
 Guy Crouse  
 Earl Ward  
 J. P. Thompson  
 Olin Perkins  
 M. Duncan

and that during all of said time Ray McNaughton has been and is the duly elected, qualified and acting Chairman of the Board of Directors, Geo. W. Schaefer has been and is the duly elected, qualified and acting Vice-Chairman of the Board of Directors, and Owen L. Butler has been and is the duly elected, qualified and acting Secretary and also the duly elected, qualified and acting Treasurer of the Authority, and

[fol. 14] 11. That there is no litigation pending or threatened involving the constitutionality of the Enabling Act,

or the right or power of the Authority to issue the Bonds authorized by the resolution of November 27, 1937, as amended by the resolution of May 10, 1938, and

12. That the meeting of the Board of Directors of the Grand River Dam Authority held at Vinita, Oklahoma on May 10, 1938 was an adjourned or recessed meeting from the regular adjourned or recessed meeting of the Board held at Vinita, Oklahoma on May 6, 1938, which latter meeting was, in turn, an adjourned or recessed meeting from the regular meeting of the Board held at Vinita, Oklahoma on May 2, 1938, all as shown by the records of the Board in my custody.

In Witness Whereof I have hereunto set my hand and affixed the corporate seal of the Authority this 25 day of June, 1938.

(S.) Owen L. Butler, Secretary. (Seal.)

[fol. 15] UNITED STATES OF AMERICA, STATE OF OKLAHOMA,

Office of the  
Attorney General and Ex Officio Bond Commissioner  
of the State of Oklahoma

I, the undersigned, the Attorney General, and Ex-Officio Bond Commissioner in and for the State of Oklahoma, hereby certify that there has been presented to me a certified transcript of record of proceedings had relative to the issuance of Twelve Million Five Hundred Thousand (\$12,500,000.00) Dollars, Grand River Dam Authority Four Per Cent Revenue Bonds issued by the Grand River Dam Authority, a Public Corporation, created and existing under and by virtue of Article 4 of Chapter 70, Oklahoma Session Laws of 1935, as amended by Articles 1 and 2 of Chapter 70, Oklahoma Session Laws of 1937, dated April 1, 1938, due and payable in serial, numerical order as follows: \$70,000.00 on the first day of April, 1943, \$110,000.00 on the first day of April in each of the years 1944 to 1947, both inclusive, \$210,000.00 on the first day of April in each of the years 1948 to 1951, both inclusive, \$320,000.00 on the first day of April in each of the years 1952 to 1956, both inclusive, \$430,000.00 on the first day of April in each of the years



1957 to 1961, both inclusive, \$540,000.00 on the first day of April in each of the years 1962 to 1966, both inclusive, \$650,000.00 on the first day of April in each of the years 1967 to 1972, both inclusive, and \$800,000.00 on the first day of April, 1973, numbered from 1 to 12,500, both inclusive, and being of the denomination of \$1,000.00 each. All of said bonds bear interest from their date until paid at the rate of four per cent per annum, payable semi-annually on the first days of October and April of each year, beginning October 1, 1938; that after careful examination of said transcript and of the executed bonds I find such proceedings regular and in full compliance with the constitution and laws of the State of Oklahoma; that I have approved said bonds as having been regularly and legally issued in accordance with the constitution and laws of the State of Oklahoma and with the forms and method of procedure prescribed as directed by Article 4, Chapter 70, Oklahoma Session Laws of 1935, as amended by Articles 1 and 2 of Chapter 70, Oklahoma Session Laws of 1937, adopted for this issue by me as Attorney General and Ex-Officio Bond Commissioner of the State of Oklahoma; that I have endorsed my certificate of approval on each bond; and that the laws of said state provide that said bonds are incontestable for any cause from and after date of registration by the State Auditor of the State of Oklahoma.

In Witness Whereof, I have hereunto set my official hand this fifth day of July, 1938.

Mae Q. Williamson, Attorney General, Ex-Officio  
Bond Commissioner of the State of Oklahoma.

Filed with State Auditor July 6, 1938.

I, Scott Stine, duly appointed, qualified and acting Assistant Auditor of the State of Oklahoma, and having custody of the records of said office, hereby certify that the attached document is a true and correct copy of a Certificate of the Attorney General, in connection with the issuance of the \$12,500,000.00 Grand River Dam Authority Bonds, filed in the office of the State Auditor on the 6th day of July, 1938.

Given under my hand and seal of the office this 25th day of November, 1938. Scott Stine, Assistant Auditor of the State of Oklahoma. (Seal.)

[fol. 16] STATE OF OKLAHOMA,  
United States of America, ss:

This is to certify that attached hereto is a true copy of the certificate of the Attorney General, Ex-Officio Bond Commissioner of the State of Oklahoma, evidencing the approval of \$12,500,000.00 of Grand River Dam Authority Four Per Cent Revenue Bonds issued by the Grand River Dam Authority, a Public Corporation, created and existing under and by virtue of Article 4 of Chapter 70, Oklahoma Session Laws of 1935, as amended by Articles 1 and 2 of Chapter 70, Oklahoma Session Laws of 1937, which bonds were dated April 1, 1933, due serially, and approved by the Attorney General on the fifth day of July, 1938, as on file in the records of the Attorney General's office.

Mac Q. Williamson, Attorney General.

[fol. 17] UNITED STATES OF AMERICA, STATE OF OKLAHOMA

Office of the Attorney General and Ex-Officio Bond Commissioner of the State of Oklahoma

I, the undersigned, the Attorney General, and Ex-Officio Bond Commissioner in and for the State of Oklahoma, hereby certify that there has been presented to me a certified transcript of record of proceedings had relative to the issuance of Twelve Million Five Hundred Thousand (\$12,500,000.00) Dollars, Grand River Dam Authority Four Per Cent Revenue Bonds issued by the Grand River Dam Authority, a Public Corporation, created and existing under and by virtue of Article 4 of Chapter 70, Oklahoma Session Laws of 1935, as amended by Articles 1 and 2 of Chapter 70, Oklahoma Session Laws of 1937, dated April 1, 1938, due and payable in serial, numerical order as follows: \$70,000.00 on the first day of April, 1943, \$110,000.00 on the first day of April in each of the years 1944 to 1947, both inclusive, \$210,000.00 on the first day of April in each of the years 1948 to 1951, both inclusive, \$320,000.00 on the first day of April in each of the years 1952 to 1956, both inclusive, \$430,000.00 on the first day of April in each of the years 1957 to 1961, both inclusive, \$540,000.00 on the first day of April in each of the years 1962 to 1966, both inclusive, \$650,000.00 on the first day of April in each of the years 1967 to 1972,

both inclusive, and \$800,000.00 on the first day of April, 1973, numbered from 1 to 12,500, both inclusive, and being of the denomination of \$1,000.00 each. All of said bonds bear interest from their date until paid at the rate of four per cent per annum, payable semi-annually on the first days of October and April of each year, beginning October 1, 1938; that after careful examination of said transcript and of the executed bonds I find such proceedings regular and in full compliance with the constitution and laws of the State of Oklahoma; that I have approved said bonds as having been regularly and legally issued in accordance with the constitution and laws of the State of Oklahoma and with the forms and method of procedure prescribed as directed by Article 4, Chapter 70, Oklahoma Session Laws of 1935, as amended by Articles 1 and 2 of Chapter 70, Oklahoma Session Laws of 1937, adopted for this issue by me as Attorney General and Ex-Officio Bond Commissioner of the State of Oklahoma; that I have endorsed my certificate of approval on each bond; and that the laws of said state provide that said bonds are incontestable for any cause from and after date of registration by the State Auditor of the State of Oklahoma.

In Witness Whereof, I have hereunto set my official hand this fifth day of July, 1938.

Mac Q. Williamson, Attorney General, Ex-Officio  
Bond Commissioner of the State of Oklahoma.

[fol. 18]

### EXHIBIT E

#### Opinion of Counsel

Date: May 23, 1939.

Federal Emergency Administrator of Public Works, Interior Building, North, Washington, D. C.

SIR:

I have examined a record of proceedings relative to the issuance of \$2,000,000 (being part of an authorized issue of \$12,500,000) Grand River Dam Authority 4% Revenue Bonds. Said bonds are dated April 1, 1938, mature in the amount of \$11,000 on April 1, 1943, \$17,000 on April 1 in each of the years 1944 and 1945, \$18,000 on April 1 in each

of the years 1946 and 1947, \$33,000 on April 1, 1948, \$34,000 on April 1 in each of the years 1949 to 1951, inclusive, \$51,000 on April 1 in each of the years 1952 to 1955, inclusive, \$52,000 on April 1, 1956, \$68,000 on April 1, 1957, \$69,000 on April 1 in each of the years 1958 to 1961, inclusive, \$86,000 on April 1 in each of the years 1962 to 1964, inclusive, \$87,000 on April 1 in each of the years 1965 and 1966, \$104,000 on April 1 in each of the years 1967 to 1972, inclusive, and \$128,000 on April 1, 1973, are redeemable upon any interest payment date at a premium of one fourth of one per centum of the principal amount thereof for each year or fraction thereof from the redemption date to the date of maturity with a maximum premium of five per centum of such principal amount, are registerable as to principal only, bear interest at the rate of 4 per centum per annum, payable semiannually on October 1 and April 1 in each year, first interest payable October 1, 1938, are numbered (numbers all inclusive) (1-11, 71-87, 181-197, 291-308, 401-418, 511-543, 721-754, 931-964, 1141-1174, 1351-1401, 1671-1721, 1991-2041, 2311-2361, 2631-2682, 2951-3018, 3381-3449, 3811-3879, 4241-4309, 4671-4739, 5101-5186, 5641-5726, 6181-6266, 6721-6807, 7261-7347, 7801-7904, 8451-8554, 9101-9204, 9751-9854, 10401-10504, 11051-11154, and 11701-11828, are payable as to both principal and interest at the office of The First National Bank of Miami, in the City of Miami, Oklahoma, or, at the option of the holder, at the principal office of The Chase National Bank of the City of New York, in the Borough of Manhattan, City and State of New York, [fol. 19] in such coin or currency as may be, on the respective dates of payment thereof, legal tender for the payment of public and private debts, are of the denomination of \$1,000 each, and are issued pursuant to Article 4, Chapter 70, Session Laws of Oklahoma, 1935, as amended by Articles 1 and 2, Chapter 70, Session Laws of Oklahoma, 1937, and by S. B. 139 and H. B. 653, enacted by the Regular Session (1939) of the Seventeenth Legislature of the State of Oklahoma.

In my opinion, said bonds are binding and legal obligations of the Grand River Dam Authority, payable from the revenues, income, profits, tolls, rents and returns, of the Authority from whatever source derived, after payment of reasonable and proper expenses of maintenance and operation.

I have examined executed Bond No. 1 and, in my opinion



the form of said bond and its execution are regular and proper.

Yours very truly, R. L. Davidson, General Counsel,  
Grand River Dam Authority, City Hall, Vinita,  
Oklahoma.

[fol. 20]

EXHIBIT E

Opinion of Counsel

Date: July 12, 1939.

Acting Commissioner of Public Works, Interior Building,  
North, Washington, D. C.

SIR:

I have examined a record of proceedings relative to the issuance of \$4,000,000 principal amount of 4% Revenue Bonds of Grand River Dam Authority, a conservation and reclamation district constituting a public corporation duly organized and existing under the laws of the State of Oklahoma with its principal office and place of business located in Vinita, Oklahoma.

Said bonds are part of an authorized issue of \$12,500,000 issued under and secured by an Indenture, dated as of April 1, 1938 by and between Grand River Dam Authority and The First National Bank of Miami, of Miami, Oklahoma, as Trustee; are dated April 1, 1938; are of the denomination of \$1,000 each; mature on April 1 in years and amounts and are numbered as follows:

Year	Amount	Numbers (both inclusive)
1943	\$22,000	1-22
1944	35,000	71-105
1945	35,000	181-215
1946	35,000	291-325
1947	35,000	401-435
1948	67,000	511-577
1949	67,000	721-787
1950	68,000	931-998
1951	68,000	1141-1208
1952	102,000	1351-1452
1953	102,000	1671-1772
1954	102,000	1991-2092

Year	Amount	Numbers (both inclusive)
1955	103,000	2311-2413
1956	103,000	2631-2733
1957	137,000	2951-3087
1958	137,000	3381-3517
1959	138,000	3811-3948
1960	138,000	4241-4378
1961	138,000	4671-4808
1962	172,000	5101-5272
1963	173,000	5641-5813
1964	173,000	6181-6353
1965	173,000	6721-6893
1966	173,000	7261-7433
1967	208,000	7801-8008
1968	208,000	8451-8658
1969	208,000	9101-9308
1970	208,000	9751-9958
1971	208,000	10401-10608
1972	208,000	11051-11258
1973	256,000	11701-11956

are redeemable at the option of the Authority as a whole, or in part in the inverse order of maturities (selection between bonds of the same maturity to be made by lot by the Trustee) upon any interest payment date after not less [fol. 21] than 30 days' published notice and written notice mailed to the holder of any registered bond selected for redemption, at a price per bond equal to the principal amount and accrued interest plus a redemption premium of  $\frac{1}{4}$  of 1% of the principal amount for each unexpired year or fraction thereof, such premium, however, in no event to exceed 5% of the principal amount, all as provided in the aforesaid Indenture; are registerable as to principal only; bear interest at the rate of 4% per annum payable semi-annually on April 1 and October 1 in each year; are payable as to both principal and interest at the office of The First National Bank of Miami, in the City of Miami, Oklahoma, or, at the option of the holder, at the principal office of The Chase National Bank of the City of New York, in the Borough of Manhattan, City and State of New York; and are issued for the purpose of defraying a part of the cost of construction of a dam on the Grand River to provide water storage for flood control and hydro-electric power development including a generating plant, equipment and

transmission lines, pursuant to Article 4, Chapter 70, Session Laws of Oklahoma, 1935, as amended by Articles 1 and 2, Chapter 70, Session Laws of Oklahoma, 1937, and by S. B. 139 and H. B. 653, enacted by the regular session (1939) of the Seventeenth Legislature of the State of Oklahoma.

In my opinion, said bonds are binding and legal obligations of Grand River Dam Authority payable as to both principal and interest from and secured by an exclusive first lien on and pledge of, in an amount sufficient to pay said principal and interest when due and to maintain a reasonable reserve therefor, the net revenue of the Authority, said net revenue being the gross revenues, income, profits, tolls, rents and returns of the Authority from whatever source derived, after deduction therefrom only of the reasonable and proper expenses of maintenance and operation.

I have examined executed Bonds No. 1 and 12 and in my opinion the form of said bonds and their execution are regular and proper.

Yours very truly, R. L. Davidson, General Counsel  
Grand River Dam Authority, City Hall, Vinita,  
Oklahoma.

[fol. 22].

#### EXHIBIT E

#### Opinion of Counsel

Date: August 18, 1939.

Commissioner of Public Works, Interior Building, North  
Washington, D. C.

SIR:

I have examined a record of proceedings relative to the issuance of \$7,000,000 principal amount of 4% revenue bonds of Grand River Dam Authority, a conservation and reclamation district constituting a public corporation, duly organized and existing under the laws of the State of Oklahoma, with its principal office and place of business located in Vinita, Oklahoma.

Said bonds are part of an authorized issue of \$12,500,000, issued under and secured by an Indenture dated as of April 1, 1938, by and between the Grand River Dam Authority and The First National Bank of Miami, of Miami, Oklahoma, as

Trustee; are dated April 1, 1938; are of the denomination of \$1,000 each; mature on April 1st in years and amounts and are numbered as follows:

Year	Amount	Numbers (both inclusive)
1943	\$39,000	1-39
1944	62,000	71-132
1945	61,000	181-241
1946	61,000	291-351
1947	61,000	401-461
1948	118,000	511-628
1949	118,000	721-838
1950	118,000	931-1048
1951	118,000	1141-1258
1952	179,000	1351-1529
1953	179,000	1671-1849
1954	179,000	1991-2169
1955	180,000	2311-2490
1956	179,000	2631-2809
1957	241,000	2951-3191
1958	240,000	3381-3620
1959	241,000	3811-4051
1960	241,000	4241-4481
1961	241,000	4671-4911
1962	302,000	5101-5402
1963	303,000	5641-5943
1964	303,000	6181-6483
1965	302,000	6721-7022
1966	302,000	7261-7562
1967	364,000	7801-8164
1968	364,000	8451-8814
1969	364,000	9101-9464
1970	364,000	9751-10114
1971	364,000	10401-10764
1972	364,000	11051-11414
1973	448,000	11701-12148

[fol. 23] are redeemable at the option of the Authority as a whole, or in part, in the inverse order of maturities (selection between bonds of the same maturity to be made by lot by the Trustee) upon any interest payment date after not less than thirty (30) days published notice, and written notice mailed to the holder of any registered bond selected for re-



demption at a price per bond equal to the principal amount and accrued interest, plus a redemption premium of one-fourth ( $\frac{1}{4}$ ) of one percent (1%) of the principal amount for each unexpired year or fraction thereof, such premium, however, in no event to exceed five percent (5%) of the principal amount, all as provided in the aforesaid Indenture; are registerable as to principal only; bear interest at the rate of four percent (4%) per annum payable semi-annually on April 1st and October 1st in each year; are payable as to both principal and interest at the office of The First National Bank of Miami, in the City of Miami, Oklahoma, or at the option of the holder, at the principal office of The Chase National Bank of the City of New York, in the Borough of Manhattan, City and State of New York; and are issued for the purpose of defraying a part of the cost of construction of the plants and system of said Grand River Dam Authority on the Grand River and elsewhere in the State of Oklahoma, for flood control and hydro-electric power development, including a dam near Pensacola on Grand River in Oklahoma, a generating plant, equipment, transmission lines, and other facilities incident thereto, and acquiring necessary lands, easements and rights-of-way therefor, pursuant to Article 4, Chapter 70, Session Laws of Oklahoma, 1935, as amended by Articles 1 and 2, Chapter 70, Session Laws of Oklahoma, 1937, and by SB 139 and HB 653, enacted by the regular session (1939) of the Seventeenth Legislature of the State of Oklahoma.

In my opinion said bonds are binding and legal obligations of the Grand River Dam Authority, payable as to both principal and interest, from and secured by an exclusive first lien on and pledge of the net revenue of the Authority, said net revenue being the gross revenue, income, profits, tolls, rents and returns of the Authority from whatever source derived after deducting therefrom only the reasonable and proper expenses of maintenance and operation.

[fol. 24] I have examined executed Bonds No. 1, 12 and 23, and in my opinion the form of said bonds and their execution are regular and proper.

Yours very truly,

R. L. Davidson, General Counsel, Grand River Dam Authority, City Hall, Vinita, Oklahoma.

## Opinion of Counsel

Date: October 18, 1939.

Commissioner of Public Works, Interior Building North,  
Washington, D. C.

SIR:

I have examined a record of proceedings relative to the issuance of \$10,000,000 principal amount of 4% revenue bonds of Grand River Dam Authority, a conservation and reclamation district constituting a public corporation, duly organized and existing under the laws of the State of Oklahoma, with its principal office and place of business located in Vinita, Oklahoma.

Said bonds are part of an authorized issue of \$12,500,000, issued under and secured by an Indenture, dated as of April 1, 1938, by and between the Grand River Dam Authority and The First National Bank of Miami, of Miami, Oklahoma, as Trustee; are dated April 1, 1938; are of the denomination of \$1,000 each; mature on April 1st in years and amounts and are numbered as follows:

Year	Amount	Numbers (both inclusive)
1943	\$ 56,000	1-56
1944	89,000	71-159
1945	87,000	181-267
1946	87,000	291-377
1947	87,000	401-487
1948	169,000	511-679
1949	169,000	721-889
1950	168,000	931-1098
1951	168,000	1141-1308
1952	256,000	1351-1606
1953	256,000	1671-1926
1954	256,000	1991-2246
1955	257,000	2311-2567
1956	255,000	2631-2885
1957	345,000	2951-3295
1958	343,000	3381-3725
1959	344,000	3811-4154
1960	344,000	4241-4584
1961	344,000	4671-5014

Year	Amount	Numbers (both inclusive)
1962	432,000	5101-5532
1963	433,000	5641-6073
1964	433,000	6181-6613
1965	431,000	6721-7151
1966	431,000	7261-7691
1967	520,000	7801-8320
1968	520,000	8451-8970
1969	520,000	9101-9620
1970	520,000	9751-10270
1971	520,000	10401-10920
1972	520,000	11051-11570
1973	640,000	11701-12340

are redeemable at the option of the Authority as a whole, or in part, in the inverse order of maturities (selection between bonds of the same maturity to be made by lot by the Trustee) upon any interest payment date after not less than thirty [fol. 26] (30) days published notice, and written notice mailed to the holder of any registered bond selected for redemption at a price per bond equal to the principal amount and accrued interest, plus a redemption premium of one-fourth ( $1/4$ ) of one percent (1%) of the principal amount for each unexpired year or fraction thereof, such premium, however, in no event to exceed five percent (5%) of the principal amount, all as provided in the aforesaid Indenture; are registerable as to principal only; bear interest at the rate of four percent (4%) per annum payable semi-annually on April 1st and October 1st in each year; are payable as to both principal and interest at the office of The First National Bank of Miami, in the City of Miami, Oklahoma, or at the option of the holder, at the principal office of The Chase National Bank of the City of New York, in the Borough of Manhattan, City and State of New York; and are issued for the purpose of defraying a part of the cost of construction of the plants and system of said Grand River Dam Authority on the Grand River and elsewhere in the State of Oklahoma, for flood control and hydro-electric power development, including a dam near Pensacola on Grand River in Oklahoma, a generating plant, equipment, transmission lines, and other facilities incident thereto, and acquiring necessary lands, easements and rights-of-way therefor, pursuant to Article 4, Chapter 70, Session Laws of Oklahoma, 1935, as amended by Articles 1 and 2, Chapter 70,

Session Laws of Oklahoma, 1937, and by SB 139 and HB 653, enacted by the regular session (1939) of the Seventeenth Legislature of the State of Oklahoma.

In my opinion said bonds are binding and legal obligations of the Grand River Dam Authority, payable as to both principal and interest, from and secured by an exclusive first lien on and pledge of the net revenue of the Authority, said net revenue being the gross revenue, income, profits, tolls, rents and returns of the Authority from whatever source derived after deducting therefrom only the reasonable and proper expenses of maintenance and operation.

I have examined executed Bonds Nos. 1, 12, 23 and 45, and in my opinion the form of said bonds and their execution are regular and proper.

Yours very truly, R. L. Davidson, General Counsel,  
Grand River Dam Authority, City Hall, Vinita,  
Oklahoma.

[fol. 27]

#### EXHIBIT E

#### Opinion of Counsel

Date January 15, 1940.

Commissioner of Public Works, Interior Building, North,  
Washington, D. C.

SIR:

I have examined a record of proceedings relative to the issuance of \$11,563,000 principal amount of 4% revenue bonds of Grand River Dam Authority, a conservation and reclamation district constituting a public corporation, duly organized and existing under the laws of the State of Oklahoma, with its principal office and place of business located in Vinita, Oklahoma.

Said bonds are part of an authorized issue of \$12,500,000, issued under and secured by an Indenture, dated as of April 1, 1938, by and between the Grand River Dam Authority and The First National Bank of Miami, of Miami, Oklahoma, as Trustees; are dated April 1, 1938; are of the denomination of \$1,000 each; mature on April 1st in years and amounts and are numbered as follows:

Year	Amount	Numbers (both inclusive)
1943	\$ 63,000	1-63
1944	100,000	71-170



Year	Amount	Numbers (both inclusive)
1945	100,000	181-280
1946	100,000	291-390
1947	100,000	401-500
1948	200,000	511-710
1949	200,000	721-920
1950	200,000	931-1130
1951	200,000	1141-1340
1952	300,000	1351-1650
1953	300,000	1671-1970
1954	300,000	1991-2290
1955	300,000	2311-2610
1956	300,000	2631-2930
1957	400,000	2951-3350
1958	400,000	3381-3780
1959	400,000	3811-4210
1960	400,000	4241-4640
1961	400,000	4671-5070
1962	500,000	5101-5600
1963	500,000	5641-6140
1964	500,000	6181-6680
1965	500,000	6721-7220
1966	500,000	7261-7760
1967	600,000	7801-8400
1968	600,000	8451-9050
1969	600,000	9101-9700
1970	600,000	9751-10350
1971	600,000	10401-11000
1972	600,000	11051-11650
1973	700,000	11701-12400

are redeemable at the option of the Authority as a whole, or in part, in the inverse order of maturities (selection between bonds of the same maturity to be made by lot by the Trustee) upon any interest payment date after not less than [fol. 28] thirty (30) days published notice, and written notice mailed to the holder of any registered bond selected for redemption, at a price per bond equal to the principal amount and accrued interest plus a redemption premium of one-fourth ( $\frac{1}{4}$ ) of one per cent (1%) of the principal amount for each unexpired year or fraction thereof, such premium, however, in no event to exceed five per cent (5%) of the principal amount, all as provided in the aforesaid Indenture; are registerable as to principal only; bear interest at

the rate of four per cent (4%) per annum payable semi-annually on April 1st and October 1st in each year; are payable as to both principal and interest at the office of The First National Bank of Miami, in the City of Miami, Oklahoma, or at the option of the holder, at the principal office of The Chase National Bank of the City of New York, in the Borough of Manhattan, City and State of New York; and are issued for the purpose of defraying a part of the cost of construction of the plants and system of said Grand River Dam Authority on the Grand River and elsewhere in the State of Oklahoma, for flood control and hydro-electric power development, including a dam near Pensacola on Grand River in Oklahoma, a generating plant, equipment, transmission lines, and other facilities incident thereto, and acquiring necessary lands, easements and rights-of-way therefor, pursuant to Article 4, Chapter 70, Session Laws of Oklahoma, 1935, as amended by Articles 1 and 2, Chapter 70, Session Laws of Oklahoma, 1937, and by SB 139 and HB 653, enacted by the regular session (1939) of the Seventeenth Legislature of the State of Oklahoma.

In my opinion, said bonds are binding and legal obligations of Grand River Dam Authority payable as to both principal and interest from and secured by an exclusive first lien on and pledge of, in an amount sufficient to pay said principal and interest when due and to maintain a reasonable reserve therefor, the net revenue of the Authority, said net revenue being the gross revenues, income, profits, tolls, rents and returns of the Authority from whatever source derived, after deduction therefrom only of the reasonable and proper expenses of maintenance and operation.

I have examined executed Bonds Nos. 1, 12, 23, 45 and 60, and in my opinion, the form of said bonds and their execution are regular and proper.

Yours very truly, R. L. Davidson, General Counsel,  
Grand River Dam Authority, City Hall, Vinita,  
Oklahoma.

[fol. 29] MINUTES OF A CALL MEETING OF THE GRAND RIVER  
DAM AUTHORITY NOVEMBER THE 27TH, 1937, HELD AT  
VINITA, OKLAHOMA

The meeting was called to order by the Chairman and on roll call, the following members were present:

Olin Perkins, Geo. W. Schaefer, M<sup>c</sup> Duncan, J. P. Thompson, Owen L. Butler, Ray McNaughton, Guy Crouse, R. P. Colley, Earl Ward.

Absent: None.

### Call of Special Meeting of Board of Directors

I, Ray McNaughton, Chairman of the Board of Directors of the Grand River Dam Authority, do hereby call a special meeting of the Board of Directors of said Grand River Dam Authority, to be held at the principal office of the Authority in Vinita, Craig County, Oklahoma, on the 27th day of November, 1937, at 10:00 o'clock in the forenoon, for the following purposes:

1. To authorize and approve the construction of the project described in the Offer of the United States of America dated October 16, 1937;
2. To consider and take action upon a form of indenture dated as of October 1, 1937, between the Grand River Dam Authority and the First National Bank of Miami, Oklahoma, as Trustee, and the issuance of not exceeding \$12,500,000 principal amount of 4% Revenue Bonds thereof;
3. To consider and take action upon a form of temporary bond to be issued under said Indenture, and upon the authorization of the present issuance and sale to the United States of America, pursuant to the aforesaid offer, of \$11,533,000 principal amount of 4% Revenue Bonds;
4. To authorize and direct the officers of the Authority to do all acts or things necessary or desirable for the carrying out of the aforesaid agreement and said Indenture, and the issuance and sale of said 4% Revenue Bonds; and
5. To transact such other business as may come before the meeting.

Dated November 27, 1937.

/s/ Ray McNaughton, Chairman.

[fol. 30] Waiver of Notice of Special Meeting of Board of Directors

We, the undersigned, being all of the members of the Board of Directors of Grand River Dam Authority, do

hereby waive notice of a special meeting of the Board of Directors of the said Grand River Dam Authority, to be held at the principal office of the Authority in the City of Vinita, Craig County, Oklahoma, on the 27th day of November, 1937, at 10:00 o'clock in the forenoon, and do hereby consent to the holding of said meeting, at the time and place aforesaid (or any adjournments thereof) for the following purposes:

1. To authorize and approve the construction of the project described in the Offer of the United States of America Dated October 16, 1937;

2. To consider and take action upon a form of Indenture, dated as of October 1, 1937, between Grand River Dam Authority and First National Bank of Miami, as Trustee, and the issuance of not exceeding \$12,500,000 principal amount of 4% Revenue Bonds thereof;

3. To consider and take action upon a form of temporary bond to be issued under said Indenture, and upon the authorization of the present issuance and sale to the United States of America, pursuant to the aforesaid Offer, of \$11,563,000 principal amount of 4% Revenue Bonds;

4. To authorize and direct the officers of the Authority to do all acts or things necessary or desirable for the carrying out of the aforesaid agreement and said Indenture, and the issuance and sale of said 4% Revenue Bonds; and

5. To transact such other business as may come before the meeting.

In Witness Whereof we have hereunto executed this waiver of notice on the date and at the time set opposite our respective names.

	Name	Date	Time of Execution
/s/	Ray McNaughton	November 27, 1937	November 27, 1937
/s/	R. P. Colley	November 27, 1937	November 27, 1937
/s/	Guy Crouse	November 27, 1937	November 27, 1937
/s/	Olin Perkins	November 27, 1937	November 27, 1937
/s/	J. P. Thompson	November 27, 1937	November 27, 1937
/s/	Earl Ward	November 27, 1937	November 27, 1937
/s/	George W. Schaefer	November 27, 1937	November 27, 1937
/s/	Owen L. Butler	November 27, 1937	November 27, 1937
/s/	M. Duncan	November 27, 1937	November 27, 1937



[fol. 31] Mr. R. V. L. Wright who has previously been selected as the General Manager appointed by the Board was given a brief outline of the operations of the Authority.

The following resolution was read by the Chairman:

Resolution—No. 6

Approving the acquisition and construction of a project for flood control, hydro-electric development and other purposes; authorizing an issue of 4% Revenue Bonds of the Authority in the aggregate principal amount of not exceeding \$12,500,000 to secure funds for the acquisition and construction of said Project, and for other corporate purposes; authorizing of the execution and delivery of an Indenture under which the same shall be issued and by which the same shall be secured, and providing for the pledge of the revenues of the Authority as security therefor; approving a form of temporary bond to be issued thereunder; and authorizing the present issuance and sale of \$11,563,000 principal amount of said bonds,

Whereas, there has been described at this meeting a project consisting of the construction of a dam to provide water storage for the purpose of flood control and of hydro-electric power development, together with hydro-electric generating plant and transmission lines, including necessary equipment and the acquisition of the necessary lands and rights of way (herein called the "Project"); and

Whereas, the Authority has accepted an offer, dated October 16, 1937, from, and thereby entered into an agreement (herein called the "Agreement") with, the United States of America (herein called the "Government"); acting by the Federal Emergency Administrator of Public Works, by which the Government has agreed, upon the terms and conditions of said agreement, to purchase not exceeding \$11,563,000 principal amount of 4% Revenue Bonds of the Authority and to make a grant of not exceeding \$8,437,000, for the acquisition and construction of the Project; and

Whereas, the estimated cost of construction and acquisition of the Project, including all incidental costs in connection therewith, does not exceed the amount available pursuant to the agreement; and

Whereas, there have been presented to, and discussed at, this meeting:

1. A proposed form of indenture (herein called the "Indenture") dated as of October 1, 1937, between the Authority and the First National Bank of Miami, as Trustee, providing for the issuance thereunder of not exceeding \$12,500,000 aggregate principal amount of 4% Revenue Bonds of the Authority, setting forth the terms and conditions upon which said bonds are to be issued, received and held, and the terms and conditions upon which said Bonds are to be secured, and the agreements of the Authority with or for the benefit of the holders of said Bonds, a copy of said Indenture being hereto annexed and marked "Exhibit A"; and

2. A proposed form of temporary bond to be issued under the Indenture, a copy of said form of temporary bond being hereto annexed and marked "Exhibit B";

said forms of Indenture and temporary bond having been initialed for identification by the Secretary and filed with the minutes of the meeting;

[fol. 32] Now, Therefore, be it Resolved by the Board of Directors of the Grand River Dam Authority:

(1) That the Authority acquire, construct and cause to be constructed the Project substantially as described at this meeting and in accordance with the provisions of the Agreement, and in conformity with all applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction in the premises;

(2) That for the purpose of providing funds for the construction of the Project, and other costs in connection therewith, and for other corporate purposes, the Authority does hereby create an issue of bonds in the aggregate principal amount of \$12,500,000 to be known and designated as Grand River Dam Authority 4% Revenue Bonds (herein called the "Bonds"), to be dated as of October 1, 1937, to mature in the amounts and at the times set forth in the Indenture and to bear interest from October 1, 1937, until paid at the rate of 4% per annum, payable semi-annually on the first day of April and the first day of October in each year, both the principal of and interest on the Bonds being payable at the office of the Trustee, in Miami, Oklahoma, or, at the option of the holder, at the office of the Chase National Bank, in the Borough of Manhattan, City and State of New York,

in such coin or currency as may be, on the respective dates of payment thereof, legal tender for the payment of public and private debts, said Bonds to be payable solely from the revenues, income, receipts, profits, rates, tolls, rents and returns (herein called "Revenues") of the Authority from whatever source derived, and to be secured by a pledge of said Revenues to the extent and in the manner set forth in the Indenture;

(3) That for the purpose of securing the payment of the principal of and interest on all the Bonds, according to their tenor and effect, and setting forth the terms and conditions upon which the Bonds, with the coupons for interest, are to be issued, authenticated, delivered, secured, accepted and held, and the trusts and conditions upon which the pledged Revenues are to be held and disposed of, the Chairman or Vice-Chairman of the Board of Directors and the Secretary be, and they are hereby, authorized and directed to execute, acknowledge and deliver, under the corporate seal of the Authority, and to cause to be recorded or filed as may be required by law or by the Trustee therein named, an Indenture substantially in the form presented to this meeting, pledging, assigning and setting over, to the First National Bank of Miami, as Trustee, and to its successors in the trust and assigns forever (upon the trusts set forth in the Indenture);

All of the revenues, income, receipts, profits, rates, tolls, rents and returns of the Authority from whatever source derived, including, but without limitation, all Revenues received from or in respect of the System described in the Indenture, and from each and every part thereof and all improvements, replacements, renewals, and extensions thereof, and additions thereto

and that the form of Indenture presented to this meeting be, and the same is hereby, approved;

(4) That this Board of Directors do, and it hereby does, expressly approve the form of Bond set forth in the Indenture;

(5) That this Board of Directors do, and it hereby does, expressly authorize the execution, issuance and authentication at one time or from time to time of Bonds in an aggregate principal amount not exceeding \$12,500,000 under the Indenture and in accordance with the terms thereof;

[fol. 33] (6) That each Bond shall be executed in the corporate name of the Authority by its Chairman or Vice-Chairman, with the seal of the Authority affixed and attested by its Secretary or an Assistant Secretary, and that to each Bond there shall be attached the requisite number of interest coupons, each coupon representing a semi-annual installment of interest on the Bond to which it is attached and bearing the engraved facsimile signature of the Treasurer of the Authority, and when so executed each of said Bonds shall be the lawful obligations of the Authority, and each of said interest coupons, when executed and delivered as a part of said coupon Bonds, as herein and in the Indenture provided, shall be the lawful obligation of the Authority securing the payment of one semi-annual installment of interest and that the Chairman or Vice-Chairman and the Secretary or an Assistant Secretary of the Authority, be, and they hereby are authorized to execute, under the corporate seal, and to deliver, said Bonds from time to time on behalf of the Authority.

(7) That, until definitive Bonds can be prepared, the Chairman or Vice-Chairman and the Secretary or an Assistant Secretary of the Authority be, and they are hereby, authorized to execute, under the corporate seal, and deliver (in accordance with the provisions of Section 2.09 of the Indenture) temporary Bonds; substantially in the form of temporary Bond presented to this meeting, and that said form of temporary Bond be, and the same is hereby approved;

(8) That the Chairman or Vice-Chairman be, and each of them hereby is, authorized and directed, prior to the sale of any of the Bonds, to submit to the Attorney-General of the State of Oklahoma, a certified copy of the proceedings for the issuance thereof, including the Indenture and the form of the Bonds (temporary or definitive, as the case may be), together with any other information which the Attorney General may request, and, if the Attorney General shall find that the Bonds have been issued in accordance with law and shall approve the same, to submit the Bonds to the State Auditor of the State of Oklahoma for registration by him, in accordance with the provision of the Act;

(9) That this Board of Directors do and it does hereby expressly pledge the revenues, income, receipts, profits,



rates, tolls, rents and returns of the Authority, from whatever source derived, including but without limitation, all Revenues received from or in respect of the System described in the Indenture, and from each and every part thereof, and all improvements, replacements, renewals and extensions thereof, and additions thereto, for the security of the Bonds to the extent, and in the manner and upon the terms and conditions, provided in the Indenture;

(10) That the Chairman or Vice-Chairman and the Treasurer and Secretary of the Authority shall be, and each of them is hereby expressly authorized and directed to execute all papers and to do all acts and things from time to time necessary or desirable in order to effectuate the intention of these resolutions or to carry out or comply with the terms and provisions of the Bonds or the Indenture or any indenture supplemental thereto, or to comply with any applicable law or governmental regulation; and

(11) That all resolutions or parts of resolutions of the Board of Directors, in so far as the same may be in conflict herewith, shall be and the same are hereby repealed.

[fol. 34] Geo. W. Schaefer made a motion seconded by Guy Crouse that the resolution as read by the Chairman be adopted. Roll was called on said motion with the following results:

Ayes: Olin Perkins, Geo. W. Schaefer, Owen L. Butler, Ray McNaughton, Guy Crouse, Earl Ward, J. P. Thompson, R. P. Colley, M. Duncan.

Nays: None.

Whereupon, the Chairman declared the motion carried and the resolution adopted.

A motion was made by J. P. Thompson and seconded by M. Duncan that the Board adjourn to convene again on the next regular meeting day, December the 6th, 1937, at 10 o'clock A. M. at Vinita, Oklahoma. The motion was duly carried.

[fol. 35]

# CERTIFICATE

STATE OF OKLAHOMA,

County of Craig, ss:

I, Owen L. Butler, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River Dam Authority, do hereby certify that I have compared

the attached extracts from the minutes with the original minutes of a special meeting of the Board of Directors of the Grand River Dam Authority held on the 27th day of November, 1937, and that said extracts are a true and conformed copy of said minutes and of the whole thereof insofar as said minutes relate to the matters mentioned and described in said extracts.

I further certify that said minutes have been duly recorded in the official minute book of said Board of Directors and appear at pages 27 to 30, inclusive, thereof, and that said extracts show all acts and proceedings taken by said Board of Directors at said meeting in any way affecting and relating to the authorization of the bond and indenture mentioned and described in said extracts.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 11 day of March, 1939.

Owen L. Butler, Secretary. (Seal.)

[fol. 36] MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY AT VINITA, OKLAHOMA, ON THE 2ND DAY OF MAY, 1938.

The regular monthly meeting of the Board of Directors of the Grand River Dam Authority was called to order by the Chairman, Ray McNaughton, with the following members present:

Ray McNaughton, George W. Schaefer, Owen L. Butler, Olin Perkins, Guy Crouse, Earl Ward, J. P. Thompson.

Absent: M. Duncan, R. P. Colley.

The minutes of the meeting of April 29th were read and there being no corrections were ordered approved.

Motion was made by George W. Schaefer and seconded by Earl Ward that the Board recess to convene again Friday, May 6, 1938. Motion carried.

[fol. 37]

CERTIFICATE

STATE OF OKLAHOMA,  
County of Craig, ss:

I, Owen L. Butler, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River

Dam Authority, do hereby certify that I have compared the attached extracts from the minutes with the original minutes of a regular meeting of the Board of Directors of the Grand River Dam Authority held on the 2nd day of May, 1938, and that said extracts are a true and conformed copy of said minutes and of the whole thereof insofar as said minutes relate to the matters mentioned and described in said extracts.

I further certify that said minutes have been duly recorded in the official minute book of said Board of Directors and appear at pages 74 to 75, inclusive, thereof, and that said extracts show all acts and all proceedings taken by said Board of Directors at said meeting in any way affecting or relating to the organization and recessing of the meeting mentioned and described in said extracts.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 14 day of March, 1939.

Owen L. Butler, Secretary. (Seal.)

[fol. 38] MINUTES OF A RECESSED MEETING OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY HELD AT VINITA, OKLAHOMA, ON THE 6TH DAY OF MAY, 1938

Pursuant to motion passed on the 2nd day of May, 1938, the Board of Directors of the Grand River Dam Authority convened in a recessed meeting at Vinita, Oklahoma, on May 6, 1938.

The meeting was called to order by Ray McNaughton, Chairman, with the following members present: Ray McNaughton, George W. Schaefer, Owen L. Butler, Guy Crouse, R. P. Colley, Earl Ward, J. P. Thompson, Olin Perkins.

Absent: M. Duncan.

The minutes of the meeting of May 2, 1938, were read and there being no corrections were ordered approved.

Motion was made by George W. Schaefer and seconded by Guy Crouse that the Board recess to convene again Tuesday, May 10, 1938, at 10:00 o'clock A. M. Motion unanimously carried.

[fol. 39]

## CERTIFICATE

STATE OF OKLAHOMA,  
County of Craig, ss.:

I, Owen L. Butler, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River Dam Authority, do hereby certify that I have compared the attached extracts from minutes with the original minutes of a recessed meeting of the Board of Directors of the Grand River Dam Authority held on the 6th day of May, 1938, and that said extracts are a true and conformed copy of said minutes and of the whole thereof insofar as said minutes relate to the matters mentioned and described in said extracts.

I further certify that said minutes have been duly recorded in the official minute book of said Board of Directors and appear at Page 75 to, —, inclusive, thereof, and that said extracts show all acts done or proceedings taken by said Board of Directors at said meeting in any way affecting or relating to the organization and recessing of the meeting mentioned and described in said extracts.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 14 day of March, 1939.

Owen L. Butler, Secretary. (Seal.)

[fol. 40] MINUTES OF A RECESSED MEETING OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY HELD AT VINITA, OKLAHOMA, ON THE 10TH DAY OF MAY, 1938.

Pursuant to motion passed on the 6th day of May, 1938, the Board of Directors of the Grand River Dam Authority convened in a recessed meeting at Vinita, Oklahoma, on May 10, 1938.

The meeting was called to order by Ray McNaughton, Chairman, with the following members present: Ray McNaughton, George W. Schaefer, Owen L. Butler, Guy Crouse, R. P. Colley, Earl Ward, Olin Perkins.

Absent: J. P. Thompson, M. Duncan.

The minutes of the meeting of May 6, 1938, were read and there being no corrections were ordered approved.

The following resolution was read to the Board by the Chairman:



"Resolution of the Board of Directors amending subdivision Two (2) of the resolution of the Board of Directors of the Grand River Dam Authority adopted on the 27th day of November, 1937, authorizing an issue of 4% revenue bonds of the Authority in the aggregate principal amount of not exceeding \$12,500,000 to secure funds for the acquisition and construction of said project and for other corporate purposes.

Whereas, heretofore on the 27th day of November, 1937, the Grand River Dam Authority acting by and through its Board of Directors passed and adopted a resolution authorizing an issue of 4% revenue bonds of the Authority in the aggregate principal amount of not exceeding \$12,500,000 to secure funds for the acquisition and construction of a dam and hydro-electric power plant on the Grand River in Mayes County, Oklahoma, and for other corporate purposes, and

Whereas, Subdivision two (2) of said resolution provided that said bonds are to be dated as of October 1, 1937, to mature in the amounts and at the times set forth in the Indenture, and to bear interest from October 1, 1937, and

Whereas, the Board of Directors has determined that it is desirable that said bonds be dated April 1, 1938, and to mature in the amounts and at the times set forth in the Indenture, identified as Exhibit "Z," and to bear interest from April 1, 1938, until paid, at the rate of 4% per annum payable semi-annually on the first day of April and the first day of October in each year;

Now, Therefore, Be It Resolved By The Board Of Directors Of The Grand River Dam Authority that Subdivision two (2) of said resolution of November 27th, 1937, be and the same is hereby amended to read as follows:

(2) That for the purpose of providing funds for the construction of the project, and other costs in connection therewith, and for other corporate purposes, the authority does hereby create an issue of bonds in the aggregate principal amount of \$12,500,000, to be known and designated as Grand River Dam Authority 4% Revenue Bonds (herein called the "Bonds"), to be dated as of April 1, 1938, to [fol. 41] mature in the amounts and at the times set forth in the Indenture, marked Exhibit "Z," and to bear interest from April 1, 1938, until paid, at the rate of 4% per annum, payable semi-annually on the first day of April and the

first day of October in each year, both the principal of and interest on the Bonds being payable at the office of the Trustee, in Miami, Oklahoma, or, at the option of the holder, at the office of The Chase National Bank, in the Borough of Manhattan, City and State of New York, in such coin or currency as may be, on the respective dates of payment thereof, legal tender for the payment of public and private debts, said Bonds to be payable solely from the revenues, income, receipts, profits, rates, tolls, rents and returns (herein called "Revenues") of the Authority from whatever source derived, and to be secured by a pledge of said Revenues to the extent and in the manner set forth in the Indenture;'"

Motion was made by Olin Perkins and seconded by Geo. W. Schaefer that the resolution as read be adopted. On roll call the following vote was had:

Ayes: Ray McNaughton, Geo. W. Schaefer, Owen L. Butler, Guy Crouse, R. P. Colley, Earl Ward, Olin Perkins.

Nays: None.

Whereupon, the Chairman declared said Resolution duly adopted.

The following resolution was read to the Board by the Chairman:

"Resolution correcting and revising the indenture referred to in the resolution of the Board of Directors of the Grand River Dam Authority adopted on the 27th day of November, 1937, as Exhibit 'A' authorizing an issue of 4% revenue bonds of the Authority in the aggregate principal amount of not exceeding \$12,500,000.00, and also correcting and revising the indenture referred to in the resolution of the Board of Directors of the Authority adopted on the 29th day of December, 1937, as Exhibit '1' and approving said corrected and revised indenture in the form of Exhibit 'Z' and initialed by the secretary of the Authority for identification, and authorizing the execution and delivery of said corrected and revised indenture by the proper officers of the Authority.

Whereas, heretofore on the 27th day of November, 1937, the Grand River Dam Authority, acting by and through its Board of Directors, passed and adopted a resolution authorizing an issue of 4% Revenue Bonds of the Authority in the aggregate principal amount of not exceeding \$12,-

500,000.00 to secure funds for the acquisition and construction of a dam and hydro-electric power plant on Grand River in Mayes County, Oklahoma, and for other corporate purposes, and authorizing the execution and delivery of an indenture therein described as Exhibit 'A' and initialed by the Secretary of the Authority for identification, under which said bonds are to be issued and by which the same shall be secured, and providing for the pledge of the revenues of the Authority as security therefor, and authorizing the present issuance and sale of \$11,563,000 principal amount of said bonds, and

Whereas, thereafter on the 29th day of December, 1937, the Grand River Dam Authority, acting by and through its Board of Directors, passed and adopted a resolution approving a revision of said indenture, and authorizing the proper officers of the Authority to execute and deliver said revised indenture therein described as Exhibit '1' and initialed by the Secretary of the Authority for identification, and

[fol. 42] Whereas, in pursuance of said resolution of December 29th, 1937, the proper officers of the Authority executed said Indenture in the form of Exhibit '1,' above referred to, and caused the same to be executed by the First National Bank of Miami, Oklahoma, as trustee, and

Whereas, it was thereupon discovered that an error had been made in the printing of said indenture through the transposition of two pages of the printer's copy, and

Whereas, the Board of Directors has determined that it is necessary and desirable that there be made a correction of said mistake in the printing of said indenture and that a further revision or modification thereof in the form attached hereto and marked Exhibit 'Z' and initialed by the Secretary of the Authority for identification, be made, and

Whereas, said corrected and revised form of the Indenture marked as Exhibit 'Z' and so initialed, is substantially in the form of the indenture referred to in the resolution of the Board of Directors passed and adopted on November 27, 1937, as Exhibit 'A,' authorizing said bond issue, and

Whereas, said corrected and revised indenture so marked as Exhibit 'Z' and initialed by the Secretary of the Authority for identification, has been presented to the Board of Directors and by them discussed at a regular meeting

of the Board held at the office of the Authority in the City of Vinita, Oklahoma, on this 10th day of May, 1938.

Now, Therefore, Be It Resolved By The Board Of Directors Of The Grand River Dam Authority that the corrected and revised form of said indenture so presented to this meeting of the Board as Exhibit 'Z' and so initialed by the Secretary, be and the same is hereby approved, and that for the purpose of securing the payment of the principal of and interest on all of said bonds authorized to be issued according to their tenor and effect, and setting forth the terms and conditions upon which the bonds with the coupons for interest are to be issued, authenticated, delivered, secured, accepted and held, and the terms and conditions upon which the pledged revenues are to be held and disposed of, the Chairman or Vice-Chairman of the Board of Directors, and the Secretary or Assistant Secretary of the Authority be and they are hereby authorized and directed to execute, acknowledge and deliver under the corporate seal of the Authority, and to cause to be recorded or filed, as may be required by law or by the trustee therein named, the corrected and revised indenture in the form presented to this meeting as Exhibit 'Z' pledging and assigning and setting over to the First National Bank of Miami, Oklahoma, as trustee, and to its successors in the trust and assigns, forever (upon the terms set forth in the indenture), all of the revenues, income, receipts, profits, rates, tolls, rents and returns of the Authority from whatever source derived, including but without limitation, all revenues received from or in respect of the system described in the corrected and revised indenture, and from each and every part thereof, and from all improvements, replacements, renewals and extensions thereof and additions thereto; and

Be It Further Resolved that the corrected and revised form of indenture herein referred to as Exhibit 'Z' and initialed by the Secretary of the Authority for identification, be executed, acknowledged and delivered in lieu and in place of the form of indenture referred to in the resolution of the Board of Directors adopted on November 27, 1937, as Exhibit 'A' and in lieu and in place of the form of indenture referred to in the resolution of the Board of Directors adopted on December 29, 1937, as Exhibit '1'."



Motion was made by Olin Perkins and seconded by R. P. Colley that the resolution as read be adopted. On roll call the following vote was had:

Ayes: Guy Crouse, Earl Ward, Olin Perkins, R. P. Colley, Ray McNaughton, Owen L. Butler.

Note voting: Geo. W. Schaefer.

[fol. 43] Whereupon, the Chairman declared that said Resolution was adopted.

Motion was made by Geo. W. Schaefer and seconded by Olin Perkins that the Board recess, to convene again Friday, May 13, at 10 o'clock A. M. Motion unanimously carried.

[fol. 44]

#### CERTIFICATE

STATE OF OKLAHOMA,

County of Craig, ss:

I, Owen L. Butler, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River Dam Authority, do hereby certify that I have compared the attached extracts from minutes with the original minutes of a recessed meeting of the Board of Directors of the Grand River Dam Authority held on the 10th day of May, 1938, and that said extracts are a true and conformed copy of said minutes and of the whole thereof insofar as said minutes relate to the matters mentioned and described in said extracts.

I further certify that said minutes have been duly recorded in the official minute book of said Board and appear at pages 75 to 79, inclusive, thereof, and that said extracts show all acts done or proceedings taken by said Board of Directors at said meeting in any way affecting or relating to the authorization or issuance of the bonds or indenture mentioned and described in said extracts and the organization and recessing of said meeting mentioned and described in said extracts.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 14 day of March, 1939.

Owen L. Butler, Secretary. (Seal.)

## [fol. 45] CALL OF SPECIAL MEETING OF BOARD OF DIRECTORS

I, Ray McNaughton, Chairman of the Board of Directors of the Grand River Dam Authority, do hereby call a special meeting of the Board of Directors of the said Grand River Dam Authority to be held at the principal office of the Authority in Vinita, Craig County, Oklahoma, on the 9th day of May, 1939, at 2:00 in the afternoon, for the following purposes:

1. To consider and take action on the matter of awarding to the United States of America \$2,000,000 of Grand River Dam Authority 4% Revenue Bonds out of the issue of \$12,500,000 previously authorized and dated April 1, 1938, and granting appropriate authority to the proper officers to consummate the sale of said bonds and to execute such instruments in connection therewith as may be necessary or convenient under the terms of the Trust Indenture of date April 1, 1938 securing the payment of said bonds.

2. To transact such other business as may come before the meeting.

Dated May 8, 1939.

Ray McNaughton, Chairman Board of Directors  
Grand River Dam Authority.

## [fol. 46] WAIVER OF NOTICE OF SPECIAL MEETING OF BOARD OF DIRECTORS

We, the undersigned, being all of the members of the Board of Directors of the Grand River Dam Authority, do hereby waive notice of a special meeting of the Board of Directors of the said Grand River Dam Authority to be held at the principal office of the Authority in the City of Vinita, Craig County, Oklahoma, on the 9th day of May, 1939, at 2:00 in the afternoon, and do hereby consent to the holding of said meeting at the time and place aforesaid (or any adjournments thereof) for the following purposes:

1. To consider and take action on the matter of awarding to the United States of America \$2,000,000 of Grand River Dam Authority 4% Revenue Bonds out of the issue of \$12,500,000 previously authorized and dated April 1, 1938, and granting appropriate authority to the proper officers to

consummate the sale of said bonds and to execute such instruments in connection therewith as may be necessary or convenient under the terms of the Trust Indenture of date April 1, 1938 securing the payment of said bonds.

2. To transact such other business as may come before the meeting.

In Witness Whereof, we have hereunto executed this waiver of notice on the date and at the time set opposite our respective names:

Name	Date	Time of Execution
Ray McNaughton	5/9/39	2 P. M.
M. Duncan	"	"
H. Eichenberger	"	"
R. P. Colley	"	"
Earl Ward	"	"

[fol. 47] MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY HELD IN THE PRINCIPAL OFFICE OF THE AUTHORITY IN THE CITY OF VINITA, CRAIG COUNTY, OKLAHOMA, MAY 9, 1939 AT 2:00 IN THE AFTERNOON OF SAID DATE.

The meeting was called to order by the Chairman, Ray McNaughton, and on roll call the following members were present: Ray McNaughton, R. P. Colley, M. Duncan, Earl Ward, H. Eichenberger.

Absent: None.

The Secretary presented the following call for a special meeting of the Board of Directors of the Authority to be held in the principal office of the Authority in the City of Vinita, Craig County, Oklahoma, on the 9th day of May, 1939, at 2:00 P. M., which was properly executed by Ray McNaughton as Chairman of the Board of Directors of said Authority, and properly filed with the Secretary of the Authority in accordance with the requirements of the by-laws of the Authority, to-wit:

#### Call of Special Meeting of Board of Directors

I, Ray McNaughton, Chairman of the Board of Directors of the Grand River Dam Authority, do hereby call a special

meeting of the Board of Directors of the said Grand River Dam Authority to be held at the principal office of the Authority in Vinita, Craig County, Oklahoma, on the 9th day of May, 1939, at 2:00 in the afternoon, for the following purposes:

1. To consider and take action on the matter of awarding to the United States of America \$2,000,000 of Grand River Dam Authority 4% Revenue Bonds out of the issue of \$12,500,000 previously authorized and dated April 1, 1938, and granting appropriate authority to the proper officers to consummate the sale of said bonds and to execute such instruments in connection therewith as may be necessary or convenient under the terms of the Trust Indenture of date April 1, 1938 securing the payment of said bonds.

2. To transact such other business as may come before the meeting.

Dated May 8, 1939.

/s/ Ray McNaughton, Chairman Board of Directors  
Grand River Dam Authority.

The Secretary of the Authority presented a waiver of notice of said meeting of the Board of Directors properly signed by all members of said Board and filed with the Secretary in accordance with the provisions of the by-laws of the Authority, to-wit:

[fol. 48] Waiver of Notice of Special Meeting of Board of Directors

We, the undersigned, being all of the members of the Board of Directors of the Grand River Dam Authority, do hereby waive notice of a special meeting of the Board of Directors of the said Grand River Dam Authority to be held at the principal office of the Authority in the City of Vinita, Craig County, Oklahoma, on the 9th day of May, 1939, at 2:00 in the afternoon, and do hereby consent to the holding of said meeting at the time and place aforesaid (or any adjournments thereof) for the following purposes:

1. To consider and take action on the matter of awarding to the United States of America \$2,000,000 of Grand River Dam Authority 4% Revenue Bonds out of the issue of \$12,500,000 previously authorized and dated April 1, 1938, and granting appropriate authority to the proper officers to consummate the sale of said bonds and to execute such instru-



ments in connection therewith as may be necessary or convenient under the terms of the Trust Indenture of date April 1, 1938 securing the payment of said bonds.

2. To transact such other business as may come before the meeting.

In Witness Whereof, we have hereunto executed this waiver of notice on the date and at the time set opposite our respective names:

Name	Date	Time of Execution
/s/ Ray McNaughton	5/9/39	2 P.M.
/s/ M. Duncan	5/9/39	2 P.M.
/s/ H. Eichenberger	5/9/39	2 P.M.
/s/ R. P. Colley	5/9/39	2 P.M.
/s/ Earl Ward	5/9/39	2 P.M.

On motion duly made and seconded the said call for said meeting and said waiver of notice of said meeting were ordered spread at large in the minutes of the meeting.

The minutes of the last previous meeting of the Board held on the 29th day of April, 1939, were read by the Secretary and on motion duly made and seconded were approved as read.

The General Manager, R. V. L. Wright, asked for the consideration by the Board of the matter of awarding to the United States of America \$2,000,000 of Grand River Dam Authority 4% Revenue Bonds of the issue of \$12,500,000 previously authorized and dated April 1, 1938, and granting appropriate authority to the proper officers of the Authority to consummate the sale of said \$2,000,000 of said bonds to the United States of America and to execute such documents for that purpose as may be necessary or convenient under the terms of the Trust Indenture of date April 1, 1938 securing the payment of said bonds.

[fol. 49] The General Counsel presented for consideration the following resolution:

#### RESOLUTION No. 240

A RESOLUTION AWARDING \$2,000,000 OF GRAND RIVER DAM AUTHORITY 4% REVENUE BONDS TO THE UNITED STATES OF AMERICA

Whereas, Grand River Dam Authority 4% Revenue Bonds dated April 1, 1938, have heretofore been authorized by the

Board of Directors of the Grand River Dam Authority in the aggregate principal amount of \$12,500,000 for the purpose of financing the Project of the Authority for flood control and hydro-electric power development; and

Whereas, a certified copy of the proceedings for the issuance of said bonds, including the form of said bonds, together with all other information required by the Attorney General of the State of Oklahoma have heretofore been submitted to the Attorney General of the State of Oklahoma and he has approved said bonds and executed a certificate to that effect which has been filed in the office of the Auditor of the State of Oklahoma and recorded in a record kept for that purpose; and

Whereas, it is desirable to sell \$2,000,000 of said bonds without delay in order to provide funds required to pay costs incurred or accruing in connection with said Project; and

Whereas, the Grand River Dam Authority has received an offer by the United States of America, through the Federal Emergency Administrator of Public Works, to purchase \$11,563,000 principal amount of bonds of said authorized issue of \$12,500,000 at a price of par plus accrued interest to date of delivery under the terms of which offer the United States of America is prepared to take up and pay for said \$11,563,000 principal amount of said bonds from time to time in installments;

Now, Therefore, Be It Resolved by the Board of Directors of the Grand River Dam Authority:

Section 1. Bonds of the Grand River Dam Authority in the aggregate principal amount of \$2,000,000, designated Grand River Dam Authority 4% Revenue Bonds, of an authorized issue of \$12,500,000 of such bonds dated April 1, 1938, and authorized for the purpose of financing the project of the Authority for flood control and hydro-electric power development, are hereby awarded to the United States of America at a price of par plus accrued interest to the date of delivery.

Section 2. Said \$2,000,000 of bonds are more particularly described as follows:

(a) Date: April 1, 1938;

(b) Denomination: \$1,000;

(c) Interest rate and interest payment dates: Four per centum per annum payable semi-annually on April 1 and October 1 in each year;

(d) Maturities: On April 1 in amounts and years and bearing the numbers as follows:

[fol. 50]

Numbers (all inclusive)	Amount	Years
1-11	\$ 11,000	1943
71-87	17,000	1944
181-197	17,000	1945
291-308	18,000	1946
401-418	18,000	1947
511-543	33,000	1948
721-754	34,000	1949
931-964	34,000	1950
1141-1174	34,000	1951
1351-1401	51,000	1952
1671-1721	51,000	1953
1991-2041	51,000	1954
2311-2361	51,000	1955
2631-2682	52,000	1956
2951-3018	68,000	1957
3381-3449	69,000	1958
3811-3879	69,000	1959
4241-4309	69,000	1960
4671-4739	69,000	1961
5101-5186	86,000	1962
5641-5726	86,000	1963
6181-6266	86,000	1964
6721-6807	87,000	1965
7261-7347	87,000	1966
7801-7904	104,000	1967
8451-8554	104,000	1968
9101-9204	104,000	1969
9751-9854	104,000	1970
10401-10504	104,000	1971
11051-11154	104,000	1972
11701-11828	128,000	1973

Section 3. The First National Bank of Miami, as Trustee under the Indenture, dated as of April 1, 1938, securing said \$12,500,000 principal amount of bonds, is hereby authorized

to authenticate and deliver the above described \$2,000,000 of bonds to the United States of America pursuant to this award, upon receipt of a written order of the Authority signed by its Chairman or Vice-Chairman and by its Treasurer to authenticate and deliver said bonds and of a certificate of the Authority signed by its Chairman or Vice-Chairman and by its Treasurer stating that the Authority has received, or upon delivery of said bonds to or upon the order of the Authority will receive, an amount in cash equal to the principal amount of said bonds to be so delivered and accrued interest thereon to the date of delivery. The Chairman or Vice-Chairman and the Treasurer of the Authority are hereby authorized and directed to execute and deliver said written order and certificate. The Treasurer of the Authority is authorized and directed to receive the purchase price for said bonds and to execute and deliver a proper receipt therefor.

Section 4. This Resolution shall take effect immediately.

After discussion of said matter and said resolution it was moved by Earl Ward and seconded by H. Eichenberger that said resolution so presented be adopted. Roll was called on said motion with the following result:

Ayes: Ray McNaughton, R. P. Colley, M. Duncan, Earl Ward, H. Eichenberger.

Nays: None.

[fol. 51] Whereupon the Chairman declared the motion carried and the resolution adopted.

Motion was made by Earl Ward and seconded by H. Eichenberger that the Board recess subject to the call of the Chairman. The motion unanimously carried.

[fol. 52]

#### CERTIFICATE

STATE OF OKLAHOMA,  
County of Craig, ss.

I, Sam De Rose, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River Dam Authority, do hereby certify that I have compared the



attached extracts from the minutes with the original minutes of the special meeting of the Board of Directors of the Grand River Dam Authority held in the principal office of the Authority at Vinita, Oklahoma at 2:00 in the afternoon on the 9th day of May, 1939, and that said extracts are a true and conformed copy of said minutes and of the whole thereof insofar as said minutes relate to the matters mentioned and described in said extracts.

I further certify that said minutes will be duly recorded in the official minute book of said Board of Directors, and that said extracts show all acts and proceedings taken by said Board of Directors at said meeting in any way affecting and relating to the awarding of the \$2,000,000 of bonds of the Authority mentioned and described in said extracts.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 9th day of May, 1939.

Sam D. Rose, Secretary.

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[fol. 53] MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY HELD AT VINITA, OKLAHOMA, ON THE 5TH DAY OF JUNE, 1939.

The Board of Directors of the Grand River Dam Authority met in its regular meeting with Earl Ward, Director, present.

It appearing that a quorum was not present, it was ordered that the meeting be recessed to convene again on the 6th day of June, 1939, at 10:00 o'clock A. M., in Vinita, Oklahoma.

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[fol. 54]

CERTIFICATE

STATE OF OKLAHOMA,  
County of Craig, ss.:

I, Sam D. Rose, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River Dam Authority, do hereby certify that I have compared the attached minutes with the original minutes of a regular meeting of the Board of Directors of the Grand River Dam Authority held in the principal offices of the Authority in the City of Vinita, Craig County, Oklahoma, on the 5th day

of June, 1939, and that said minutes are a true and conformed copy of said minutes and of the whole thereof.

I further certify that said minutes have been duly recorded in the official minute book of said Board of Directors.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 22nd day of June, 1939.

Sam D. Rose, Secretary. (Seal.)

[fol. 55] MINUTES OF A RECESSED MEETING OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY HELD AT VINITA, OKLAHOMA, ON THE 6TH DAY OF JUNE, 1939.

Pursuant to the order made at a regular meeting held on June 5, 1939, at which meeting a quorum was not present, the Board of Directors of the Grand River Dam Authority convened in a recessed meeting at Vinita, Oklahoma, on the 6th day of June, 1939.

The meeting was called to order by the Vice-Chairman, R. P. Colley, with the following members present: R. P. Colley, M. Duncan, H. Eichenberger, Earl Ward.

Absent: Ray McNaughton.

A motion was made by H. Eichenberger and seconded by M. Duncan that the Board recess to convene again on June 13, 1939, at 10:00 o'clock A. M., Vinita, Oklahoma. The motion unanimously carried.

[fol. 56]

CERTIFICATE

STATE OF OKLAHOMA,

County of Craig, ss.:

I, Sam D. Rose, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River Dam Authority, do hereby certify that I have compared the attached extracts from the minutes with the original minutes of a recessed meeting of the Board of Directors of the Grand River Dam Authority held in the principal offices of the Authority in the City of Vinita, Craig County, Oklahoma, on the 6th day of June, 1939, and that said extracts are a true and conformed copy of said minutes and of the whole thereof insofar as said minutes relate to the matters mentioned and described in said extracts.

I further certify that said minutes have been duly recorded in the official minute book of said Board of Directors.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 22nd day of June, 1939.

Sam D. Rose, Secretary. (Seal.)

[fol. 57] MINUTES OF RECESSED REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY HELD IN THE PRINCIPAL OFFICE OF THE AUTHORITY IN THIS CITY OF VINITA, CRAIG COUNTY, OKLAHOMA, ON JUNE 20, 1939, AT 10:00 O'CLOCK IN THE FORENOON OF SAID DATE.

The meeting was called to order by the Chairman, Ray McNaughton, and on roll call the following members were present: Ray McNaughton, M. Duncan, H. Eichenberger, Earl Ward.

Absent: R. P. Colley.

The minutes of the last previous meeting of the Board held on the 13th day of June, 1939, were read by the Secretary and on motion duly made and seconded, were approved as read.

The General Manager, R. V. L. Wright, asked for the consideration by the Board of Directors of the matter of awarding to the United States of America \$2,000,000 of Grand River Dam Authority 4% Revenue Bonds of the issue of \$12,500,000 previously authorized and dated April 1, 1938, and granting appropriate authority to the proper officers of the Authority to consummate the sale of said \$2,000,000 of said bonds to the United States of America, and to execute such instruments for that purpose as may be necessary or convenient under the terms of the Trust Indenture of date April 1, 1938, securing the payment of said bonds.

The General Counsel presented for consideration the following resolution:

#### Resolution No. 280

A Resolution Awarding \$2,000,000 of Grand River Dam Authority 4% Revenue Bonds to the United States of America

Whereas, Grand River Dam Authority 4% Revenue Bonds dated April 1, 1938, have heretofore been authorized

by the Board of Directors of the Grand River Dam Authority in the aggregate principal amount of \$12,500,000 for the purpose of financing the Project of the Authority for flood control and hydro-electric power development; and

Whereas, a certified copy of the proceedings for the issuance of said bonds, including the form of said bonds, together with all other information required by the Attorney General of the State of Oklahoma, have heretofore been submitted to the Attorney General of the State of Oklahoma and he has approved said bonds and executed a certificate to that effect, which has been filed in the office of the Auditor of the State of Oklahoma and recorded in a record kept for that purpose; and

Whereas, it is desirable to sell \$2,000,000 of said bonds without delay in order to provide funds required to pay costs incurred or accruing in connection with said Project; and

Whereas, the Grand River Dam Authority has received an Offer by the United States of America, through the Federal Emergency Administrator of Public Works, to purchase \$11,563,000 principal amount of bonds of said authorized issue of \$12,500,000 at a price of par plus accrued interest to date of delivery under the terms of which Offer the United States of America is prepared to take up and pay for said \$11,563,000 principal amount of said bonds from time to time in installments;

[fol. 58] Now, Therefore, be it Resolved by the Board of Directors of the Grand River Dam Authority:

Section 1. Bonds of the Grand River Dam Authority in the aggregate principal amount of \$2,000,000, designated Grand River Dam Authority 4% Revenue Bonds, of an authorized issue of \$12,500,000 of such bonds dated April 1, 1938, and authorized for the purpose of financing the project of the Authority for flood control and hydro-electric power development, are hereby awarded to the United States of America at a price of par plus accrued interest to the date of delivery.

Section 2. Said \$2,000,000 of bonds are more particularly described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.



In the amount of: \$2,000,000; being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
12-22	\$ 11,000	April 1, 1943
88-105	18,000	April 1, 1944
198-215	18,000	April 1, 1945
309-325	17,000	April 1, 1946
419-435	17,000	April 1, 1947
544-577	34,000	April 1, 1948
755-787	33,000	April 1, 1949
965-998	34,000	April 1, 1950
1175-1208	34,000	April 1, 1951
1402-1452	51,000	April 1, 1952
1722-1772	51,000	April 1, 1953
2042-2092	51,000	April 1, 1954
2362-2413	52,000	April 1, 1955
2683-2733	51,000	April 1, 1956
3019-3087	69,000	April 1, 1957
3450-3517	68,000	April 1, 1958
3880-3948	69,000	April 1, 1959
4310-4378	69,000	April 1, 1960
4740-4808	69,000	April 1, 1961
5187-5272	86,000	April 1, 1962
5727-5813	87,000	April 1, 1963
6267-6353	87,000	April 1, 1964
6808-6893	86,000	April 1, 1965
7348-7433	86,000	April 1, 1966
7905-8008	104,000	April 1, 1967
8555-8658	104,000	April 1, 1968
9205-9308	104,000	April 1, 1969
9855-9958	104,000	April 1, 1970
10505-10608	104,000	April 1, 1971
11155-11258	104,000	April 1, 1972
11829-11956	128,000	April 1, 1973

Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938.

Section 3. The First National Bank of Miami, as Trustee under the Indenture, dated as of April 1, 1938, securing said \$12,500,000 principal amount of bonds, is hereby au-

thorized to authenticate and deliver the above described \$2,000,000 of bonds to the United States of America pursuant to this award, upon receipt of a written order of the Authority signed by its Chairman or Vice-Chairman and by its Treasurer to authenticate and deliver said bonds and of a certificate of the Authority signed by its Chairman or Vice-Chairman and by its Treasurer stating that the Authority has received, or upon delivery of said bonds to or upon the order of the Authority will receive, an amount in cash equal to the principal amount of said bonds to be so delivered and accrued interest thereon to the date of delivery. The Chairman or Vice-Chairman and the Treasurer of the Authority are hereby authorized and directed to execute and deliver said written order and certificate. The Treasurer of the Authority is authorized and directed to receive the purchase price for said bonds and to execute and deliver a proper receipt therefor.

Section 4. This Resolution shall take effect immediately.

After discussion of said matter and said resolution, it was moved by H. Eichenberger and seconded by M. Duncan that said resolution so presented be adopted. Roll was called on said motion with the following result:

Ayes: Ray McNaughton, M. Duncan, H. Eichenberger, Earl Ward.

Nays: None.

Whereupon the Chairman declared the motion carried and the resolution adopted.

A motion was made by H. Eichenberger and seconded by Earl Ward that the Board recess until the 27th day of June, 1939. The motion was unanimously carried.

[fol. 60]

#### CERTIFICATE

STATE OF OKLAHOMA,

County of Craig, ss:

I, Sam D. Rose, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River Dam Authority, do hereby certify that I have compared the attached extracts from the minutes with the original minutes of a recessed regular meeting of the Board of Directors of the Grand River Dam Authority held in the principal offices of the Authority in the City of Vinita, Craig

County, Oklahoma, on the 20th day of June, 1939, and that said extracts are a true and conformed copy of said minutes and of the whole thereof insofar as said minutes relate to the matters mentioned and described in said extracts.

I further certify that said minutes have been duly recorded in the official minute book of said Board of Directors and that said extracts show all acts and proceedings taken by said Board of Directors at said meeting in any way affecting and relating to the award to the United States of America of the \$2,000,000 of Grand River Dam Authority 4% Revenue Bonds mentioned and described in said extracts.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 20th day of June, 1939.

Sam D. Rose, Secretary. (Seal.)

[fol. 61] MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY HELD AT VINITA, OKLAHOMA, ON THE 3RD DAY OF JULY, 1939

The Board of Directors of the Grand River Dam Authority met in its regular meeting with Earl Ward, Director, present.

It appearing that a quorum was not present, it was ordered that the meeting be recessed to convene again on the 7th day of July, 1939, at 10:00 o'clock A. M., in Vinita, Oklahoma.

[fol. 62]

CERTIFICATE

STATE OF OKLAHOMA,  
County of Craig, ss:

I, Sam D. Rose, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River Dam Authority, do hereby certify that I have compared the attached extracts from the minutes with the original minutes of a regular meeting of the Board of Directors of the Grand River Dam Authority held on the 3rd day of July, 1939, and that said extracts are a true and conformed copy of said minutes and of the whole thereof insofar

as said minutes relate to the matters mentioned and described in said extracts.

I further certify that said minutes have been duly recorded in the official minute book of said Board of Directors, and that said extracts show all acts and all proceedings taken by said Board of Directors at said meeting in any way affecting or relating to the organization and recessing of the meeting mentioned and described in said extracts.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 12th day of August, 1939.

Sam D. Rose, Secretary. (Seal.)

[fol. 63] MINUTES OF A RECESSED MEETING OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY HELD AT VINITA, OKLAHOMA, ON THE 7TH DAY OF JULY, 1939

Pursuant to the order made at a regular meeting held on July 3, 1939, at which meeting a quorum was not present, the Board of Directors of the Grand River Dam Authority convened in a recessed meeting at Vinita, Oklahoma, on the 7th day of July, 1939.

The meeting was called to order by the Chairman with the following members present: Ray McNaughton, R. P. Colley, H. Eichenberger, Earl Ward.

Absent: M. Duncan.

Also present were R. V. L. Wright, General Manager, R. L. Davidson, General Counsel, and W. R. Holway of Holway & Neuffer, Consulting Engineers.

The minutes of the meeting of June 27, 1939, were read and, there being no corrections, were ordered approved.

A motion was made by R. P. Colley and seconded by Earl Ward that the Board recess to convene again on July 11, 1939, at 10:00 o'clock A. M., Vinita, Oklahoma. The motion unanimously carried.

[fol. 64]

CERTIFICATE

STATE OF OKLAHOMA,

County of Craig, ss:

I, Sam D. Rose, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River



Dam Authority, do hereby certify that I have compared the attached extracts from the minutes with the original minutes of a recessed meeting of the Board of Directors of the Grand River Dam Authority held on the 7th day of July, 1939, and that said extracts are a true and conformed copy of said minutes and of the whole thereof insofar as said minutes relate to the matters mentioned and described in said extracts.

I further certify that said minutes have been duly recorded in the official minute book of said Board of Directors, and that said extracts show all acts and all proceedings taken by said Board of Directors at said meeting in any way affecting or relating to the organization and recessing of the meeting mentioned and described in said extracts.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 12th day of August, 1939.

Sam D. Rose, Secretary. (Seal.)

[fol. 65] MINUTES OF A RECESSED MEETING OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY HELD AT VINITA, OKLAHOMA, ON THE 11TH DAY OF JULY, 1939.

Pursuant to motion passed on the 7th day of July, 1939, the Board of Directors of the Grand River Dam Authority convened in a recessed meeting at Vinita, Oklahoma, on the 11th day of July, 1939.

The meeting was called to order by the Chairman, Ray McNaughton, and on roll call the following members were present: Ray McNaughton, R. P. Colley, H. Eichenberger, Earl Ward.

Absent: M. Duncan.

Also present were R. V. L. Wright, General Manager, R. L. Davidson, General Counsel, and W. R. Holway of Holway & Neuffer, Engineers.

The minutes of the meeting of July 7, 1939, were read and, after being corrected, were ordered approved.

A motion was made by Earl Ward and seconded by R. P. Colley that the Board recess to convene again on Friday, July 14, 1939, at 10:00 o'clock A. M., Vinita, Oklahoma. The motion unanimously carried.

[fol. 66]

## CERTIFICATE

STATE OF OKLAHOMA,  
County of Craig, ss:

I, Sam D. Rose, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River Dam Authority, do hereby certify that I have compared the attached extracts from the minutes with the original minutes of a recessed meeting of the Board of Directors of the Grand River Dam Authority held on the 11th day of July, 1939, and that said extracts are a true and conformed copy of said minutes and of the whole thereof insofar as said minutes relate to the matters mentioned and described in said extracts. .

I further certify that said minutes have been duly recorded in the official minute book of said Board of Directors, and that said extracts show all acts and all proceedings taken by said Board of Directors at said meeting in any way affecting or relating to the organization and recessing of the meeting mentioned and described in said extracts.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 12th day of August, 1939.

Sam D. Rose, Secretary. (Seal.)

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[fol. 67] MINUTES OF A RECESSED MEETING OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY HELD AT VINITA, OKLAHOMA, ON THE 14TH DAY OF JULY, 1939.

Pursuant to motion passed on the 11th day of July, 1939, the Board of Directors of the Grand River Dam Authority convened in a recessed meeting at Vinita, Oklahoma, on the 14th day of July, 1939.

The meeting was called to order by the Chairman, Ray McNaughton, and on roll call the following members were present: Ray McNaughton, R. P. Colley, H. Eichenberger, Earl Ward.

Absent: M. Duncan.

Also present were R. V. L. Wright, General Manager, R. L. Davidson, General Counsel, and W. R. Holway, of Holway & Neuffer, Engineers.

The minutes of the meeting of July 11, 1939, were read and, there being no corrections, were ordered approved.

The General Manager presented for consideration the following resolution:

**Resolution No. 306.**

**A Resolution Awarding \$3,000,000 of Grand River Dam Authority 4% Revenue Bonds to the United States of America.**

Whereas, Grand River Dam Authority 4% Revenue Bonds dated April 1, 1938, have heretofore been authorized by the Board of Directors of the Grand River Dam Authority in the aggregate principal amount of \$12,500,000 for the purpose of financing the Project of the Authority for flood control and hydroelectric power development; and

Whereas, a certified copy of the proceedings for the issuance of said bonds, including the form of said bonds, together with all other information required by the Attorney General of the State of Oklahoma have heretofore been submitted to the Attorney General of the State of Oklahoma and he has approved said bonds and executed a certificate to that effect, which has been filed in the office of the Auditor of the State of Oklahoma and recorded in a record kept for that purpose; and

Whereas, it is desirable to sell \$3,000,000 of said bonds without delay in order to provide funds required to pay costs incurred or accruing in connection with said Project; and

Whereas, the Grand River Dam Authority has received an Offer by the United States of America, through the Federal Emergency Administrator of Public Works, to purchase \$11,563,000 principal amount of bonds of said authorized issue of \$12,500,000 at a price of par plus accrued interest to date of delivery under the terms of which Offer the United States of America is prepared to take up and pay for said \$11,563,000 principal amount of said bonds from time to time in installments;

Now, Therefore, Be it Resolved by the Board of Directors of the Grand River Dam Authority:

Section 1. Bonds of the Grand River Dam Authority in the aggregate principal amount of \$3,000,000, designated

Grand River Dam Authority 4% Revenue Bonds, of an authorized issue of \$12,500,000 of such bonds dated April 1, 1938, and authorized for the purpose of financing the project of the Authority for flood control and hydroelectric power [fol. 68] development, are hereby awarded to the United States of America at a price of par plus accrued interest to the date of delivery.

Section 2. Said \$3,000,000 of bonds are more particularly described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of: \$3,000,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers. (all inclusive)	Amount	Maturity dates
23-39	\$17,000	April 1, 1943
106-132	27,000	April 1, 1944
216-241	26,000	April 1, 1945
326-351	26,000	April 1, 1946
436-461	26,000	April 1, 1947
578-628	51,000	April 1, 1948
788-838	51,000	April 1, 1949
999-1048	50,000	April 1, 1950
1209-1258	50,000	April 1, 1951
1453-1529	77,000	April 1, 1952
1773-1849	77,000	April 1, 1953
2093-2169	77,000	April 1, 1954
2414-2490	77,000	April 1, 1955
2734-2809	76,000	April 1, 1956
3088-3191	104,000	April 1, 1957
3518-3620	103,000	April 1, 1958
3949-4051	103,000	April 1, 1959
4379-4481	103,000	April 1, 1960
4809-4911	103,000	April 1, 1961
5273-5402	130,000	April 1, 1962
5814-5943	130,000	April 1, 1963
6354-6483	130,000	April 1, 1964
6894-7022	129,000	April 1, 1965
7434-7562	129,000	April 1, 1966
8009-8164	156,000	April 1, 1967
8659-8814	156,000	April 1, 1968



Numbers (all inclusive)	Amount	Maturity dates
9309-9464	156,000	April 1, 1969
9959-10114	156,000	April 1, 1970
10609-10764	156,000	April 1, 1971
11259-11414	156,000	April 1, 1972
11957-12148	192,000	April 1, 1973

Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938.

Section 3. The First National Bank of Miami, as Trustee under the Indenture, dated as of April 1, 1938, securing said \$12,500,000 principal amount of bonds, is hereby authorized to authenticate and deliver the above described \$3,000,000 of bonds to the United States of America pursuant to this award, upon receipt of a written order of the Authority signed by its Chairman or Vice-Chairman and by its Treasurer to authenticate and deliver said bonds, and of a certificate of the Authority signed by its Chairman or Vice-Chairman and by its Treasurer stating that the Authority has received, or upon delivery of said bonds to or upon the order of the Authority will receive, an amount in cash equal to the principal amount of said bonds to be so delivered and accrued interest thereon to the date of delivery. The Chairman or Vice-Chairman and the Treasurer of the Authority are hereby authorized and directed to execute and deliver said written order and certificate. The Treasurer of the Authority is authorized and directed to receive the purchase price for said bonds and to execute and deliver a proper receipt therefor.

Section 4. This Resolution shall take effect immediately. [fol. 69] After discussion of said matter and said resolution, it was moved by H. Eichenberger and seconded by Earl Ward that said resolution, as presented, be adopted. Roll was called on said resolution with the following result:

Ayes: Ray McNaughton, R. P. Colley, H. Eichenberger, Earl Ward.

Nays: None.

Whereupon, the Chairman declared the motion carried and the resolution adopted.

A motion was made by R. P. Colley and seconded by Earl Ward that the Board recess to convene again on July 19, 1939, at 10:00 o'clock A. M., Vinita, Oklahoma. The motion unanimously carried.

[fol. 70]

## CERTIFICATE

STATE OF OKLAHOMA,

County of Craig, ss.:

I, Sam D. Rose, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River Dam Authority, do hereby certify that I have compared the attached extracts from the minutes with the original minutes of a recessed meeting of the Board of Directors of the Grand River Dam Authority held on the 14th day of July, 1939, and that said extracts are a true and conformed copy of said minutes and of the whole thereof insofar as said minutes relate to the matters mentioned and described in said extracts.

I further certify that said minutes have been duly recorded in the official minute book of said Board and that said extracts show all acts done or proceedings taken at said meeting of the Board of Directors in any way affecting the awarding to the United States of America of three million dollars (\$3,000,000) of Grand River Dam Authority 4% Revenue Bonds therein referred to, and the organization and recessing of said meeting mentioned and described in said extracts.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 12th day of August, 1939.

Sam D. Rose, Secretary.

[fol. 71] MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY HELD AT VINITA, OKLAHOMA, ON THE 4TH DAY OF SEPTEMBER, 1939

The Board of Directors of the Grand River Dam Authority met in its regular meeting with Earl Ward, Director, present.

It appearing that a quorum was not present, it was

ordered that the meeting be recessed to convene again on the 5th day of September, 1939, at 10:00 o'clock A. M., in Vinita, Oklahoma.

[fol. 72]

CERTIFICATE

STATE OF OKLAHOMA,  
County of Craig, ss.:

I, Sam D. Rose, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River Dam Authority, do hereby certify that I have compared the attached extracts from the minutes with the original minutes of a regular meeting of the Board of Directors of the Grand River Dam Authority held on the 4th day of September, 1939, and that said extracts are a true and conformed copy of said minutes and of the whole thereof insofar as said minutes relate to the matters mentioned and described in said extracts.

I further certify that said minutes have been duly recorded in the official minute book of said Board of Directors, and that said extracts show all acts and all proceedings taken by said Board of Directors at said meeting in any way affecting or relating to the organization and recessing of the meeting mentioned and described in said extracts.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 7th day of September, 1939.

Sam D. Rose, Secretary.

[fol. 73] MINUTES OF A RECESSED MEETING OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY HELD AT VINITA, OKLAHOMA, ON THE 5TH DAY OF SEPTEMBER, 1939.

Pursuant to the order made at a regular meeting held on the 4th day of September, 1939, at which meeting a quorum was not present, the Board of Directors of the Grand River Dam Authority convened in a recessed meeting at Vinita, Oklahoma, on the 5th day of September, 1939.

The meeting was called to order by the Chairman, Ray

McNaughton, with the following members present: Ray McNaughton, R. P. Colley, H. Eichenberger, Earl Ward.  
Absent: M. Duncan.

General Manager R. V. L. Wright, General Counsel R. L. Davidson, and W. R. Holway, Consulting Engineer, were not present due to attending Federal Court in Tulsa, Oklahoma.

The minutes of the meeting of August 29, 1939, were read and, there being no corrections, were ordered approved.

The minutes of the meeting of September 4, 1939, were read and, there being no corrections, were ordered approved.

\* \* \* \* \*

The following resolution was presented for the consideration of the Board of Directors of the matter of awarding to the United States of America \$3,000,000 of Grand River Dam Authority 4% Revenue Bonds of the issue of \$12,500,000 previously authorized and dated April 1, 1938, and granting appropriate authority to the proper officers of the Authority to consummate the sale of said \$3,000,000 of said bonds to the United States of America, and to execute such instruments for that purpose as may be necessary or convenient under the terms of the Trust Indenture of date April 1, 1938, securing the payment of said bonds:

#### Resolution No. 373

A Resolution Awarding \$3,000,000 of Grand River Dam Authority 4% Revenue Bonds to the United States of America.

Whereas, Grand River Dam Authority 4% Revenue Bonds dated April 1, 1938, have heretofore been authorized by the Board of Directors of the Grand River Dam Authority in the aggregate principal amount of \$12,500,000 for the purpose of financing the Project of the Authority for flood control and hydroelectric power development; and

Whereas, a certified copy of the proceedings for the issuance of said bonds, including the form of said bonds, together with all other information required by the Attorney General of the State of Oklahoma have heretofore been submitted to the Attorney General of the State of



Oklahoma and he has approved said bonds and executed a certificate to that effect, which has been filed in the office of the Auditor of the State of Oklahoma and recorded in a record kept for that purpose; and

Whereas, it is desirable to sell \$3,000,000 of said bonds without delay in order to provide funds required to pay costs incurred or accruing in connection with said Project; and

Whereas, the Grand River Dam Authority has received an Offer by the United States of America, through the Federal Emergency Administrator of Public Works, to purchase \$11,563,000 principal amount of bonds of said authorized issue of \$12,500,000 at a price of par plus accrued interest to date of delivery under the terms of which Offer the United States of America is prepared to take up and pay for said \$11,563,000 principal amount of said bonds from time to time in installments; [fol. 74] Now, Therefore, Be it Resolved by the Board of Directors of the Grand River Dam Authority:

Section 1. Bonds of the Grand River Dam Authority in the aggregate principal amount of \$3,000,000, designated Grand River Dam Authority 4% Revenue Bonds, of an authorized issue of \$12,500,000 of such bonds dated April 1, 1938, and authorized for the purpose of financing the project of the Authority for flood control and hydroelectric power development, are hereby awarded to the United States of America at a price of par plus accrued interest to the date of delivery.

Section 2. Said \$3,000,000 of bonds are more particularly described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of: \$3,000,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
40-56	\$ 17,000	4-1-43
133-159	27,000	4-1-44
242-267	26,000	4-1-45
352-377	26,000	4-1-46
462-487	26,000	4-1-47

Numbers (all inclusive)	Amount	Maturity Date
629-679	51,000	4-1-48
839-889	51,000	4-1-49
1049-1098	50,000	4-1-50
1259-1308	50,000	4-1-51
1530-1606	77,000	4-1-52
1850-1926	77,000	4-1-53
2170-2246	77,000	4-1-54
2491-2567	77,000	4-1-55
2810-2885	76,000	4-1-56
3192-3295	104,000	4-1-57
3621-3723	103,000	4-1-58
4052-4154	103,000	4-1-59
4482-4584	103,000	4-1-60
4912-5014	103,000	4-1-61
5403-5532	130,000	4-1-62
5944-6073	130,000	4-1-63
6484-6613	130,000	4-1-64
7023-7151	129,000	4-1-65
7563-7691	129,000	4-1-66
8165-8320	156,000	4-1-67
8815-8970	156,000	4-1-68
9465-9620	156,000	4-1-69
10115-10270	156,000	4-1-70
10765-10920	156,000	4-1-71
11415-11570	156,000	4-1-72
12149-12340	192,000	4-1-73

Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938.

Section 3. The First National Bank of Miami, as Trustee under the Indenture, dated as of April 1, 1938, securing said \$12,500,000 principal amount of bonds, is hereby authorized to authenticate and deliver the above described \$3,000,000 of bonds to the United States of America pursuant to this award, upon receipt of a written order of the Authority signed by its Chairman or Vice-Chairman and by its Treasurer to authenticate and deliver said bonds, and of a certificate of the Authority signed by its Chairman or Vice-Chairman and by its Treasurer stating that the Authority has received, or upon delivery of said bonds to or upon the order of the Authority will receive,

an amount in cash equal to the principal amount of said bonds to be so delivered and accrued interest thereon to the date of delivery. The Chairman or Vice-Chairman and the Treasurer of the Authority are hereby authorized [fol. 75] and directed to execute and deliver said written order and certificate. The Treasurer of the Authority is authorized and directed to receive the purchase price for said bonds and to execute and deliver a proper receipt therefor.

Section 4. This resolution shall take effect immediately.

A motion was made by H. Eichenberger and seconded by Earl Ward that the resolution, so presented, be adopted. On roll call the following vote was had:

Ayes: Ray McNaughton, R. P. Colley, H. Eichenberger, Earl Ward.

Nays: None.

Whereupon, the Chairman declared the motion carried and the resolution adopted.

A motion was made by R. P. Colley and seconded by Earl Ward that the Board recess to convene again on Tuesday, September 12, 1939, at 10:00 o'clock A.M., in Vinita, Oklahoma. The motion unanimously carried:

[fol. 76]

#### CERTIFICATE

STATE OF OKLAHOMA,  
County of Craig, ss:

I, Sam D. Rose, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River Dam Authority, do hereby certify that I have compared the attached extracts from the minutes with the original minutes of a recessed meeting of the Board of Directors of the Grand River Dam Authority held on the 5th day of September, 1939, and that said extracts are a true and conformed copy of said minutes and of the whole thereof insofar as said minutes relate to the matters mentioned and described in said extracts.

I further certify that said minutes have been duly recorded in the official minute book of said Board of Di-

rectors, and that said extracts show all acts and all proceedings taken by said Board of Directors at said meeting in any way affecting or relating to the organization and recessing of the meeting mentioned and described in said extracts.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 7th day of September, 1939.

Same D. Rose, Secretary. (Seal.)

[fol. 77] MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY HELD IN THE PRINCIPAL OFFICE OF THE AUTHORITY IN THE CITY OF VINITA, CRAIG COUNTY, OKLAHOMA, ON THE 7TH DAY OF NOVEMBER, 1939, AT 10:00 IN THE MORNING OF SAID DATE.

The meeting was called to order by the Chairman, Ray McNaughton, and on roll call the following members were present: Ray McNaughton, R. P. Colley, M. Duncan, Earl Ward, H. Eichenberger.

Absent: None.

Also present were R. V. L. Wright, General Manager, R. L. Davidson, General Counsel, and W. R. Holway, Consulting Engineer.

The Secretary presented the following call for a special meeting of the Board of Directors of the Authority to be held in the principal office of the Authority in the City of Vinita, Craig County, Oklahoma, on the 7th day of November, 1939, at 10:00 A. M., which was properly executed by Ray McNaughton as Chairman of the Board of Directors of said Authority, and properly filed with the Secretary of the Authority in accordance with the requirements of the by-laws of the Authority, to-wit:

#### Call of Special Meeting of Board of Directors

I, Ray McNaughton, Chairman of the Board of Directors of the Grand River Dam Authority, do hereby call a special meeting of the Board of Directors of the said Grand River Dam Authority to be held at the principal office of the Authority in Vinita, Craig County, Oklahoma, on the 7th day of November, 1939, at 10:00 in the morning, for the following purposes:

1. To consider and take action on the matter of awarding to the United States of America \$1,563,000 of Grand River



Dam Authority 4% Revenue Bonds out of the issue of \$12,500,000 previously authorized and dated April 1, 1938, and granting appropriate authority to the proper officers to consummate the sale of said bonds and to execute such instruments in connection therewith as may be necessary or convenient under the terms of the Trust Indenture of date April 1, 1938 securing the payment of said bonds.

2. To transact such other business as may come before the meeting.

Dated November 7, 1939.

(S.) Ray McNaughton, Chairman Board of Directors, Grand River Dam Authority.

The Secretary of the Authority presented a waiver of notice of said meeting of the Board of Directors properly signed by all members of said Board and filed with the Secretary in accordance with the provisions of the by-laws of the Authority, to-wit:

#### Waiver of Notice of Special Meeting of Board of Directors

We, the undersigned, being all of the members of the Board of Directors of the Grand River Dam Authority, do hereby waive notice of a special meeting of the Board of Directors of the said Grand River Dam Authority to be held at the principal office of the Authority in the City of Vinita, Craig County, Oklahoma, on the 7th day of November, 1939, at 10:00 in the morning, and do hereby consent to the holding of said meeting at the time and place aforesaid (or any adjournments thereof) for the following purposes:

[fol. 78] 1. To consider and take action on the matter of awarding to the United States of America \$1,563,000 of Grand River Dam Authority 4% Revenue Bonds out of the issue of \$12,500,000 previously authorized and dated April 1, 1938, and granting appropriate authority to the proper officers to consummate the sale of said bonds and to execute such instruments in connection therewith as may be necessary or convenient under the terms of the Trust Indenture of date April 1, 1938 securing the payment of said bonds.

2. To transact such other business as may come before the meeting.

In Witness Whereof, we have hereunto executed this waiver of notice on the date and at the time set opposite our respective names:

Name	Date	Time of Execution
/s/ Ray McNaughton	November 7, 1939	10:00 A. M.
/s/ H. Eichenberger	November 7, 1939	10:00 A. M.
/s/ Earl Ward	November 7, 1939	10:00 A. M.
/s/ R. P. Colley	November 7, 1939	10:00 A. M.
/s/ M. Duncan	November 7, 1939	10:00 A. M.

A motion was made by Earl Ward and seconded by R. P. Colley that said call for said meeting and said waiver of notice of said meeting be spread at large in the minutes of the meeting. The motion unanimously carried.

The minutes of the meeting of October 31, 1939, were read and, there being no corrections, were ordered approved.

The General Manager, R. V. L. Wright, asked for the consideration by the Board of the matter of awarding to the United States of America \$1,563,000 of Grand River Dam Authority 4% Revenue Bonds of the issue of \$12,500,000 previously authorized and dated April 1, 1938, and granting appropriate authority to the proper officers of the Authority to consummate the sale of said \$1,563,000 of said bonds to the United States of America and to execute such documents for that purpose as may be necessary or convenient under the terms of the Trust Indenture of date April 1, 1938 securing the payment of said bonds.

The General Counsel presented for consideration the following resolution:

#### Resolution No. 438

A Resolution Awarding \$1,563,000.00 of Grand River Dam Authority 4% Revenue Bonds to the United States of America.

Whereas, Grand River Dam Authority 4% Revenue Bonds dated April 1, 1938, have heretofore been authorized by the Board of Directors of the Grand River Dam Authority in the aggregate principal amount of \$12,500,000 for the purpose of financing the Project of the Authority for flood control and hydro-electric power development; and

Whereas, a certified copy of the proceedings for the issuance of said bonds, including the form of said bonds, to-

gether with all other information required by the Attorney General of the State of Oklahoma have heretofore been submitted to the Attorney General of the State of Oklahoma and he has approved said bonds and executed a certificate to that effect, which has been filed in the office of the Auditor of the State of Oklahoma and recorded in a record kept for that purpose; and

Whereas, it is desirable to sell \$1,563,000 of said bonds without delay in order to provide funds required to pay costs incurred or accruing in connection with said Project; and

[fol. 79] Whereas, the Grand River Dam Authority has received an Offer by the United States of America, through the Federal Emergency Administrator of Public Works, to purchase \$11,563,000 principal amount of bonds of said authorized issue of \$12,500,000 at a price of par plus accrued interest to date of delivery under the terms of which Offer the United States of America is prepared to take up and pay for said \$11,563,000 principal amount of said bonds from time to time in installments;

Now, Therefore, Be it Resolved by the Board of Directors of the Grand River Dam Authority:

Section 1. Bonds of the Grand River Dam Authority in the aggregate principal amount of \$1,563,000, designated Grand River Dam Authority 4% Revenue Bonds, of an authorized issue of \$12,500,000 of such bonds dated April 1, 1938, and authorized for the purpose of financing the project of the Authority for flood control and hydro-electric power development, are hereby awarded to the United States of America at a price of par plus accrued interest to the date of delivery

Section 2. Said \$1,563,000 of bonds are more particularly described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of \$1,563,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
57-63	\$7,000	4-1-43
160-170	11,000	4-1-44
288-280	13,000	4-1-45
378-390	13,000	4-1-46
488-500	13,000	4-1-47
680-710	31,000	4-1-48
890-920	31,000	4-1-49
1099-1130	32,000	4-1-50
1309-1340	32,000	4-1-51
1607-1650	44,000	4-1-52
1927-1970	44,000	4-1-53
2247-2290	44,000	4-1-54
2568-2610	43,000	4-1-55
2886-2930	45,000	4-1-56
3296-3350	55,000	4-1-57
3724-3780	57,000	4-1-58
4155-4210	56,000	4-1-59
4585-4640	56,000	4-1-60
5015-5070	56,000	4-1-61
5533-5600	68,000	4-1-62
6074-6140	67,000	4-1-63
6614-6680	67,000	4-1-64
7152-7220	69,000	4-1-65
7692-7760	69,000	4-1-66
8321-8400	80,000	4-1-67
8971-9050	80,000	4-1-68
9621-9700	80,000	4-1-69
10271-10350	80,000	4-1-70
10921-11000	80,000	4-1-71
11571-11650	80,000	4-1-72
12341-12400	60,000	4-1-73

[fol. 80] Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938.

Section 3. The First National Bank of Miami, as Trustee under the Indenture, dated as of April 1, 1938, securing said \$12,500,000 principal amount of bonds, is hereby authorized to authenticate and deliver the above described \$1,563,000 of bonds to the United States of America pursuant to this award, upon receipt of a written order of the Authority signed by its Chairman or Vice-Chairman and by its Treas-



rer to authenticate and deliver said bonds, and of a certificate of the Authority signed by its Chairman or Vice-Chairman and by its Treasurer stating that the Authority has received, or upon delivery of said bonds to or upon the order of the Authority will receive an amount in cash equal to the principal amount of said bonds to be so delivered and accrued interest thereon to the date of delivery. The Chairman or Vice-Chairman and the Treasurer of the Authority are hereby authorized and directed to execute and deliver said written order and certificate. The Treasurer of the Authority is authorized and directed to receive the purchase price for said bonds and to execute and deliver a proper receipt therefor.

Section 4. This resolution shall take effect immediately.

After discussion of said matter and said resolution, it was moved by R. P. Colley and seconded by H. Eichenberger that said resolution so presented be adopted. Roll was called on said motion with the following results:

Ayes: Ray McNaughton, R. P. Colley, M. Duncan, H. Eichenberger, Earl Ward.

Nays: None.

Whereupon, the Chairman declared the motion carried and the resolution adopted.

A motion was made by R. P. Colley and seconded by Earl Ward that the Board recess to convene again on November 14, 1939, at 10:00 o'clock A.M., in Vinita, Oklahoma. The motion unanimously carried.

#### CERTIFICATE

STATE OF OKLAHOMA,  
County of Craig, ss:

I, Sam D. Rose, the duly appointed, qualified and acting Secretary of the Board of Directors of the Grand River Dam Authority, do hereby certify that I have compared the attached extracts from the minutes with the original minutes of a special meeting of the Board of Directors of the Grand River Dam Authority held on the 7th day of November, 1939, and that said extracts are a true and conformed copy

of said minutes and of the whole thereof insofar as said minutes relate to the matters mentioned and described in said extracts.

I further certify that said minutes have been duly recorded in the official minute book of said Board of Directors and that said extracts show all acts and all proceedings taken by said Board of Directors at said meeting in any way affecting or relating to the organization and recessing of the meeting mentioned and described in said extracts.

In Witness Whereof I hereunto set my hand and affix the corporate seal of the Grand River Dam Authority this 6th day of December, 1939.

Sam D. Rose, Secretary. (Seal.)

[fol. 81]

(Revenue Bonds.)

#### NO-LITIGATION CERTIFICATE

I, R. L. Davidson, hereby certify that I am the duly appointed and acting Attorney for the Grand River Dam Authority, that no litigation of any nature is now pending or threatened (either in State or Federal Courts) restraining or enjoining the issuance, sale, execution or delivery of the bonds of said Grand River Dam Authority described below, or the construction or operation of the project (PWA Docket No. Okla. 1097-P-DS) or the fixing, the charging or the collection of adequate rates or charges to pay the interest on or principal of said bonds, or the costs of operation or maintenance of, or the setting aside of depreciation or other reserves for the project, or in any manner questioning the authority or proceedings for the issuance, sale, execution or delivery of said bonds, or affecting in any other way the validity of the bonds or the construction or operation of the project or the fixing, the charging or the collection of said rates or charges, or contesting the corporate existence or boundaries of said Grand River Dam Authority or the title of any of the present officers thereof to their respective offices.

I further certify that no proceedings or authority for the issuance, sale, execution or delivery of said bonds have or has been repealed, rescinded or revoked.

The bonds herein referred to are described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

Authorized amount: \$12,500,000.

Date bonds are to bear: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
1-70	\$ 70,000	April 1, 1943
71-180	110,000	April 1, 1944
181-290	110,000	April 1, 1945
291-400	110,000	April 1, 1946
401-510	110,000	April 1, 1947
511-720	210,000	April 1, 1948
721-930	210,000	April 1, 1949
931-1140	210,000	April 1, 1950
1141-1350	210,000	April 1, 1951
1351-1670	320,000	April 1, 1952
1671-1990	320,000	April 1, 1953
1991-2310	320,000	April 1, 1954
2311-2630	320,000	April 1, 1955
2631-2950	320,000	April 1, 1956
2951-3380	430,000	April 1, 1957
3381-3810	430,000	April 1, 1958
3811-4240	430,000	April 1, 1959
4241-4670	430,000	April 1, 1960
4671-5100	430,000	April 1, 1961
5101-5640	540,000	April 1, 1962
5641-6180	540,000	April 1, 1963
6181-6720	540,000	April 1, 1964
6721-7260	540,000	April 1, 1965
7261-7800	540,000	April 1, 1966
7801-8450	650,000	April 1, 1967
8451-9100	650,000	April 1, 1968
9101-9750	650,000	April 1, 1969
9751-10400	650,000	April 1, 1970
10401-11050	650,000	April 1, 1971
11051-11700	650,000	April 1, 1972
11701-12500	800,000	April 1, 1973

[fol. 82] Interest rate: 4% per centum per annum, payable semiannually October 1 and April 1 in each year, first interest payable October 1, 1938.

There are two injunction suits pending which do remotely affect the construction of minor portions of the Project:

First, a suit in the District Court of Craig County, Oklahoma, by O. J. Pharoah vs. the Authority seeking specific performance in his favor of Contract No. 9 (Elevation Frisco Railway Tracks) upon the theory that the tentative or conditional award of that contract to him by the Authority or his bid constituted a binding contract between him and the Authority, under which vested rights accrue, and a permanent injunction against the Authority enjoining it from awarding the contract to any bidder other than Pharoah. A temporary injunction was denied by the Court and an appeal to the Supreme Court of the State prayed by Pharoah from the order of the Court denying the temporary injunction. The Court has entered an order in the case permitting Pharoah to amend his petition for a permanent injunction setting up additional facts and making additional parties. The amended petition has not yet been filed, but obviously, if it is filed, the additional facts to be alleged are the proceedings of the Authority subsequently awarding the contract to Leo Sanders, entering into the contract with him and issuing to him a Work Order to proceed with the work prescribed in the contract, and the additional party to be made is Leo Sanders, to whom the contract was finally awarded. Under the amended pleadings Pharoah could and may ask for an injunction against the Authority and Sanders enjoining them from proceeding with the construction work called for in the contract. In my opinion there is no merit to this litigation.

Second, an injunction suit in the District Court of Mayes County, Oklahoma by Willis Thompson vs. the Authority and its contractor and subcontractor under Contract No. 7 (Construction of Dam and Power House) seeking a permanent injunction enjoining them from trespassing upon certain land owned by him near the West end of the dam, in the performance of certain work (grading and paving about five hundred (500) feet of road-way on his land) called for under Contract No. 7. A temporary injunction was denied by the Court and an answer has been filed making up the issues on the permanent injunction, but the case has not yet been tried. The Authority entered upon this property to do the work called for under Contract No. 7 relying upon an easement in writing executed by Thompson granting this property to the Board of County Commissioners of Mayes County, Oklahoma, for road and park purposes. And also relying upon permission granted by the Board



of County Commissioners to the Authority to enter upon said land and grade and pave the road-way thereon called for under Contract No. 7. In a suit between Willis Thompson and the Board of County Commissioners, to which the Authority was not a party, the Court recently held said easement valid as to the one hundred (100) foot road-way, but cancelled it as to the land granted for park purposes. Appeal has been prayed in that case to the Supreme Court. This litigation is of no consequence in its effect on the construction of the Project for the reason that whatever part of this land the Authority may need can be obtained by purchase or condemnation without materially delaying the construction work under Contract No. 7.

In Witness Whereof, I have hereunto set my hand this 17 day of January, 1937.

R. L. Davidson, Attorney.

Signature guaranteed as that of the attorney for the Grand River Dam Authority.

First National Bank of Miami, Oklahoma, Member  
Federal Reserve System, by C. H. Mullendore,  
Cashier-Trust Officer. (Seal)

[fol. 83]

# EXHIBIT L

## Certificate of State Auditor

I, the undersigned Frank C. Carter, Do Hereby Certify that I am the duly appointed, qualified and acting State Auditor of the State of Oklahoma.

I Further Certify that I have adopted and do adopt as my signature, and as the signature of the State Auditor of the State of Oklahoma, the signature of C. C. Childers, as State Auditor, as it appears on the certificate on the reverse side of the bonds of the Grand River Dam Authority hereinafter described, which certificate reads as follows:

## "Certificate of State Auditor

UNITED STATES OF AMERICA,  
State of Oklahoma, ss.:-

I, the undersigned, State Auditor of the State of Oklahoma, hereby certify that there is on file and of record

in my office a certificate of the Attorney General of the State of Oklahoma approving this Bond and the proceedings for the issuance thereof and certifying that this Bond and the proceedings for the issuance thereof have been examined by him as required by law, and that he finds that this Bond has been issued in accordance with the law and in conformity with the Constitution and Laws of the State of Oklahoma, and that it is a valid and binding special obligation of said Grand River Dam Authority, payable from the revenues pledged to its payment by and in the proceedings authorizing the same, and I do further certify that, on the 6th day of July, 1938, I registered this Bond.

Witness my hand and seal of office, this 6th day of July, 1938.

C. C. Childers, State Auditor of the State of Oklahoma. (Seal.)

Said bonds are described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of: \$2,000,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
1-11	11,000	April 1, 1943
71-87	17,000	April 1, 1944
181-197	17,000	April 1, 1945
291-308	18,000	April 1, 1946
401-418	18,000	April 1, 1947
511-543	33,000	April 1, 1948
721-754	34,000	April 1, 1949
931-964	34,000	April 1, 1950
1141-1174	34,000	April 1, 1951
1351-1401	51,000	April 1, 1952
1671-1721	51,000	April 1, 1953
[fol. 84] 1991-2041	51,000	April 1, 1954
2311-2361	51,000	April 1, 1955
2631-2682	52,000	April 1, 1956
2951-3018	68,000	April 1, 1957
3381-3449	69,000	April 1, 1958
3811-3879	69,000	April 1, 1959

Numbers (all inclusive)	Amount	Maturity Dates
4241-4309	69,000	April 1, 1960
4671-4739	69,000	April 1, 1961
5101-5186	86,000	April 1, 1962
5641-5726	86,000	April 1, 1963
6181-6266	86,000	April 1, 1964
6721-6807	87,000	April 1, 1965
7261-7347	87,000	April 1, 1966
7801-7904	104,000	April 1, 1967
8451-8554	104,000	April 1, 1968
9101-9204	104,000	April 1, 1969
9751-9854	104,000	April 1, 1970
10401-10504	104,000	April 1, 1971
11051-11154	104,000	April 1, 1972
11701-11828	128,000	April 1, 1973

Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938.

I Further Certify that the seal of office of the State Auditor of the State of Oklahoma which has been impressed upon such certificate upon each of said bonds and also upon this certificate is the legally adopted, proper and only official seal of the office of the State Auditor of Oklahoma.

Witness my hand and the seal of office of the State Auditor of the State of Oklahoma this 23rd day of May, 1939.

Frank C. Carter, State Auditor of the State of Oklahoma. (Seal.)

Signature guaranteed as that of the State Auditor of the State of Oklahoma.

First National Bank & Trust Co., Oklahoma City, Okla., Member Federal Reserve System, by Hugh L. Harrell, Vice President.

[fol. 85]

#### EXHIBIT K

#### Opinion Regarding Outstanding Obligations

I, R. L. Davidson, General Counsel of the Grand River Dam Authority, Vinita, Oklahoma, Do Hereby Certify that said Authority has not heretofore incurred any bonded indebtedness and that I am familiar with the outstanding liabilities of said Authority and, in my opinion, none of such

liabilities is represented or secured by a charge or lien upon or pledge of the whole or any part of the revenues of the Authority to be derived from its Flood Control and Hydro-Electric Power Project, identified as PWA Docket No. Oklahoma 1097-P-DS, or otherwise.

This the 23rd day of May, 1939.

R. L. Davidson, General Counsel of the Grand River Dam Authority.

[fol. 86]

EXHIBIT J

Certificate of No Adverse Legislation

I, the undersigned Attorney General of the State of Oklahoma, hereby certify that no legislation has been enacted at the regular session of the Seventeenth Legislature of the State of Oklahoma which convened on the 3rd day of January, 1939, except two acts designated S. B. No. 139 and H. B. No. 653, respectively, in any wise affecting the power or authority of the Grand River Dam Authority of the State of Oklahoma to authorize and issue \$12,500,000 principal amount of Grand River Dam Authority 4% Revenue Bonds, dated April 1, 1938, or the power or authority of the Grand River Dam Authority to construct and operate the public works for which said bonds are authorized to be issued or in any wise affecting the validity of said bonds or the security for the payment thereof.

This the 23rd day of May, 1939.

Mac Q. Williamson, Attorney General of the State of Oklahoma.

Signature guaranteed as that of the Attorney General of the State of Oklahoma.

First National Bank & Trust Co., Oklahoma City, Okla., Member Federal Reserve System. By Hugh L. Harrell, Vice-President.

[fol. 87]

EXHIBIT "G"

Certificate of Attorney General of the State of Oklahoma

I, the undersigned Mac Q. Williamson, do hereby certify that I am, and was at the time of by execution of the



certificate on each of bonds hereinafter described; the duly chosen, qualified and acting Attorney General of the State of Oklahoma and ex-officio Bond Commissioner of the State of Oklahoma. I further certify that on the 5th day of July, 1938, I officially signed and dated, as said Attorney General, the certificate which reads as follows:

"State of Oklahoma, Office of the Attorney General,

Bond Department

I, the undersigned, Attorney General of the State of Oklahoma, hereby certify that I have examined a certified copy of the proceedings for the issuance of this Bond, including the form of the Bond; that such proceedings and such Bond show lawful authority for the issuance thereof; and that this Bond has been issued in accordance with law, and is a valid and binding obligation according to its tenor and terms; and, is hereby approved.

Dated, July 2, 1938.

Mac Q. Williamson, Attorney General of the State of Oklahoma."

and which is endorsed upon each of the bonds of the Grand River Dam Authority, described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of: \$2,000,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
1-11	\$11,000	April 1, 1943
71-87	17,000	April 1, 1944
181-197	17,000	April 1, 1945
291-308	18,000	April 1, 1946
401-418	18,000	April 1, 1947
511-543	33,000	April 1, 1948
721-754	34,000	April 1, 1949
931-964	34,000	April 1, 1950
1141-1174	34,000	April 1, 1951
1351-1401	51,000	April 1, 1952
1671-1721	51,000	April 1, 1953
1991-2041	51,000	April 1, 1954
2311-2361	51,000	April 1, 1955

Numbers (all inclusive)	Amount	Maturity Dates
2631-2682	52,000	April 1, 1956
2951-3018	68,000	April 1, 1957
3381-3449	69,000	April 1, 1958
3811-3879	69,000	April 1, 1959
4241-4309	69,000	April 1, 1960
4671-4739	69,000	April 1, 1961
[fol. 88] 5101-5186	86,000	April 1, 1962
5641-5726	86,000	April 1, 1963
6181-6266	86,000	April 1, 1964
6721-6807	87,000	April 1, 1965
7261-7347	87,000	April 1, 1966
7801-7904	104,000	April 1, 1967
8451-8554	104,000	April 1, 1968
9101-9204	104,000	April 1, 1969
9751-9854	104,000	April 1, 1970
10401-10504	104,000	April 1, 1971
11051-11154	104,000	April 1, 1972
11701-11828	128,000	April 1, 1973

Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938.

Witness my signature this 23rd day of May, 1939.

Mac Q. Williamson, Attorney General of the State of Oklahoma.

Signature guaranteed as that of the Attorney General of the State of Oklahoma.

First National Bank & Trust Co., Oklahoma City, Okla., Member, Federal Reserve System. By Hugh L. Harrell, Vice President.

[fol. 89]

#### EXHIBIT B

#### Signature and No-Litigation Certificate

I, Ray McNaughton, the undersigned Chairman of the Board of Directors of the Grand River Dam Authority, do hereby certify that on the 6th day of July, 1938, I, as such Chairman, and Owen L. Butler, as Secretary of said Authority, officially signed the bonds of said Grand River Dam Authority, which bonds are described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of \$2,000,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
1-11	\$11,000	April 1, 1943
71-87	17,000	April 1, 1944
181-197	17,000	April 1, 1945
291-308	18,000	April 1, 1946
401-418	18,000	April 1, 1947
511-543	33,000	April 1, 1948
721-754	34,000	April 1, 1949
931-964	34,000	April 1, 1950
1141-1174	34,000	April 1, 1951
1351-1401	51,000	April 1, 1952
1671-1721	51,000	April 1, 1953
1991-2041	51,000	April 1, 1954
2311-2361	51,000	April 1, 1955
2631-2682	52,000	April 1, 1956
2951-3018	68,000	April 1, 1957
3381-3449	69,000	April 1, 1958
3811-3879	69,000	April 1, 1959
4241-4309	69,000	April 1, 1960
4671-4739	69,000	April 1, 1961
5101-5186	86,000	April 1, 1962
5641-5726	86,000	April 1, 1963
6181-6266	86,000	April 1, 1964
6721-6807	87,000	April 1, 1965
7261-7347	87,000	April 1, 1966
7801-7904	104,000	April 1, 1967
8451-8554	104,000	April 1, 1968
9101-9204	104,000	April 1, 1969
9751-9854	104,000	April 1, 1970
10401-10504	104,000	April 1, 1971
11051-11154	104,000	April 1, 1972
11701-11828	128,000	April 1, 1973

Interest rate: 4 per centum per annum, payable semiannually October 1 and April 1 in each year, first interest payable October 1, 1938,

being at the date of such signing the duly chosen, qualified and acting officers stated above and authorized to execute said bonds.

[fol. 90] I, the undersigned Sam D. Rose, hereby certify that I am the duly qualified and acting Secretary and Treasurer of the Grand River Dam Authority. I further certify that I have adopted and do adopt as my signature, the signature of Owen L. Butler as it appears upon the above described bonds as Secretary of said Authority and the facsimile signature of said Owen L. Butler as it appears upon the interest coupons attached to said bonds as Treasurer of said Authority.

We, the undersigned Ray McNaughton and Sam D. Rose, further certify that no litigation of any nature is now pending or threatened (either in State or Federal Courts) restraining or enjoining the issuance, sale, execution or delivery of said bonds, or the construction or operation of the Project (PWA Docket No. Okla. 1097-P-DS) to aid in financing the construction of which said bonds were authorized and issued, or the fixing, the charging or the collection of adequate rates or charges to pay the interest on or principal of said bonds, or the costs of operation or maintenance of, or the setting aside of depreciation or other reserves for said project or in any manner questioning the authority or proceedings for the issuance, sale, execution or delivery of said bonds, or affecting the validity of the bonds, or the construction or operation of said project or the fixing, the charging or the collection of said rates or charges in any way; that neither the corporate existence nor the boundaries of said Grand River Dam Authority, nor the title of its present officers to their respective offices, is being contested, and that no proceedings or authority for the issuance, sale, execution or delivery of said bonds have or has been repealed, rescinded or revoked.

There are two injunction suits pending which do remotely affect the construction of minor portions of the Project.

First, a suit in the District Court of Craig County, Oklahoma by O. J. Pharoah v. the Authority seeking specific performance in his favor of Contract No. 9 (Elevation Frisco Railway Tracks) upon the theory that the tentative or conditional award of that contract to him by the Authority on his bid constituted a binding contract between him and the Authority, under which vested rights accrue, and a permanent injunction against the Authority enjoining it from awarding the contract to any bidder other than Pha-



roah. A temporary injunction was denied by the Court and an appeal to the Supreme Court of the State prayed by Pharoah from the order of the Court denying the temporary injunction. The Court has entered an order in the case permitting Pharoah to amend his petition for a permanent injunction setting up additional facts and making addition parties.

Second, an injunction suit in the District Court of Mayes County, Oklahoma by Willis Thompson against the Authority and its contractor and subcontractor under Contract No. 7 (Construction of Dam and Power House) seeking a permanent injunction enjoining them from trespassing upon certain land owned by him near the West end of the dam, in the performance of certain work (grading and paving about five hundred (500) feet of roadway on his land) called for under Contract No. 7. A temporary injunction was denied by the Court and an answer has been filed making up the issues on the permanent injunction, but the case has not yet been tried. The Authority entered upon this property to do the work called for under Contract No. 7 relying upon an easement in writing executed by Thompson granting this property to the Board of County Commissioners of Mayes County, Oklahoma for road and park purposes. And also relying upon permission granted by the Board of County Commissioners to the Authority to enter upon said land and grade and pave the road-way thereon called for under Contract No. 7. In a suit between Willis Thompson and the Board of County Commissioners, to which the Authority was not a party, the Court recently held said easement valid as to the one hundred (100) foot road-way, but cancelled it as to the land granted for park purposes. Appeal has been prayed in that case to the Supreme Court. This litigation is of no consequence in its effect on the construction of the Project for the reason that whatever part of this land the Authority [fol. 91] may need can be obtained by purchase or condemnation without materially delaying the construction work under Contract No. 7.

We Further Certify that the seal which has been impressed upon all of said bonds and upon this certificate is the legally adopted, proper and only official corporate seal.

Witness our hands and said corporate seal this 23rd day of May, 1939.

Signature, Ray McNaughton; Official Title, Chairman; Expiration of Office, Dec. 31, 1939. Sam D. Rose, Secretary and Treasurer, Aug. 1, 1939. (Seal.)

Signatures above and upon each of the above-described obligations guaranteed as those of the officers respectively designated above.

First National Bank, Miami, Oklahoma, Member Federal Reserve System, By C. H. Mullendore, Cashier. Roy T. Wills, President.

[fol. 92]

(Revenue Bonds)

### EXHIBIT C

#### Financial Certificate

I, Sam D. Rose, the undersigned Treasurer of the Grand River Dam Authority, hereby certify that there have been no changes in the financial condition of said Grand River Dam Authority, other than those incidental to the ordinary conduct of its affairs, since the date of the last financial statement submitted to the Government as a part of its application for a loan and grant.

I Further Certify that the financial condition of said Grand River Dam Authority is at least as favorable as it was on the date of its application for a loan and grant from the Government.

I Further Certify that there is no default in the payment of principal or interest on any outstanding obligation or indebtedness of said Grand River Dam Authority.

In Witness Whereof, I have hereunto set my hand this 23rd day of May, 1939.

Sam D. Rose, Treasurer.

Signature guaranteed as that of the Treasurer of the Grand River Dam Authority.

First National Bank of Miami, Oklahoma, Member Federal Reserve System, By Roy T. Wills, President.

[fol. 93]

## EXHIBIT K

## Certificate of State Auditor

I, the undersigned Frank C. Carter, Do. Hereby Certify that I am the duly appointed, qualified and acting State Auditor of the State of Oklahoma.

I Further Certify that I have adopted and do adopt as my signature, and as the signature of the State Auditor of the State of Oklahoma, the signature of C. C. Childers, as State Auditor, as it appears on the certificate on the reverse side of the bonds of the Grand River Dam Authority hereinafter described, which certificate reads as follows:

## "Certificate of State Auditor

UNITED STATES OF AMERICA,  
State of Oklahoma, ss:

I, the undersigned, State Auditor of the State of Oklahoma, hereby certify that there is on file and of record in my office a certificate of the Attorney General of the State of Oklahoma approving this Bond and the proceedings for the issuance thereof and certifying that this Bond and the proceedings for the issuance thereof have been examined by him as required by law, and that he finds that this Bond has been issued in accordance with law and in conformity with the Constitution and Laws of the State of Oklahoma, and that it is a valid and binding special obligation of said Grand River Dam Authority, payable from the revenues pledged to its payment by and in the proceedings authorizing the same, and I do further certify that, on the 6th day of July, 1938, I registered this Bond. Witness my hand and seal of office, this 6th day of July, 1938.

(S.) C. C. Childers, State Auditor of the State of Oklahoma."

Said bonds are described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of: \$2,000,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
12-22	\$11,000	April 1, 1943
88-105	18,000	April 1, 1944
198-215	18,000	April 1, 1945
309-325	17,000	April 1, 1946
419-435	17,000	April 1, 1947
544-577	34,000	April 1, 1948
755-787	33,000	April 1, 1949
965-998	34,000	April 1, 1950
1175-1208	34,000	April 1, 1951
1402-1452	51,000	April 1, 1952
1722-1772	51,000	April 1, 1953
2042-2092	51,000	April 1, 1954
[fol. 94]		
2362-2413	52,000	April 1, 1955
2683-2733	51,000	April 1, 1956
3019-3087	69,000	April 1, 1957
3450-3517	68,000	April 1, 1958
3880-3948	69,000	April 1, 1959
4310-4378	69,000	April 1, 1960
4740-4808	69,000	April 1, 1961
5187-5272	86,000	April 1, 1962
5727-5813	87,000	April 1, 1963
6267-6353	87,000	April 1, 1964
6808-6893	86,000	April 1, 1965
7348-7433	86,000	April 1, 1966
7905-8008	104,000	April 1, 1967
8555-8658	104,000	April 1, 1968
9205-9308	104,000	April 1, 1969
9855-9958	104,000	April 1, 1970
10505-10608	104,000	April 1, 1971
11155-11258	104,000	April 1, 1972
11829-11956	128,000	April 1, 1973

Interest rate: 4 per centum per annum, payable semiannually October 1 and April 1 in each year, first interest payable October 1, 1938.

I Further Certify that the seal of office of the State Auditor of the State of Oklahoma which has been impressed upon such certificate upon each of said bonds and also upon this certificate is the legally adopted, proper and only official seal of the office of the State Auditor of Oklahoma.



Witness my hand and the seal of office of the State Auditor of the State of Oklahoma this 12th day of July, 1939.

F. C. Carter, State Auditor of the State of Oklahoma.  
(Seal.)

Signature guaranteed as that of the State Auditor of Oklahoma.

First National Bank & Trust Co., Oklahoma City,  
Okla., Member, Federal Reserve System, By Hugh  
L. Harrell, Vice Pres. (Seal.)

[fol. 95]

### EXHIBIT J

#### Opinion Regarding Outstanding Obligations

I, R. L. Davidson, General Counsel of the Grand River Dam Authority, Vinita, Oklahoma, do hereby certify that said Authority has not heretofore incurred any bonded indebtedness except Four Million Dollars (\$4,000,000.00) of 4% revenue bonds heretofore and on the date hereof purchased by the United States of America, and that I am familiar with the outstanding liabilities of said Authority and in my opinion none of such liabilities is represented or secured by a charge or lien upon or pledge of the whole or any part of the revenues of the Authority to be derived from its flood control and hydro-electric power project identified as P. W. A. Docket No. Okla. 1097-P-DS, or otherwise, except the Four Million Dollars (\$4,000,000.00) of 4% revenue bonds of the Authority purchased as aforesaid by the United States of America, which are secured ratably, when issued, with the remainder of the authorized issue of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) of such 4% revenue bonds by a pledge of the revenues of the Authority under and by virtue of that certain Indenture, dated as of April 1, 1938, by and between Grand River Dam Authority and The First National Bank of Miami, of Miami, Oklahoma, as Trustee.

This the 12th day of July, 1939.

R. L. Davidson, General Counsel of Grand River  
Dam Authority.

## Certificate of Attorney General of the State of Oklahoma

"I, the undersigned Mac Q. Williamson, do hereby certify that I am, and was at the time of my execution of the certificate on each of bonds hereinafter described, the duly chosen, qualified and acting Attorney General of the State of Oklahoma and ex-officio Bond Commissioner of the State of Oklahoma. I further certify that on the 5th day of July, 1938, I officially signed and dated, as said Attorney General, the certificate which reads as follows:

"State of Oklahoma, Office of the Attorney General, Bond Department

I, the undersigned, Attorney General of the State of Oklahoma, hereby certify that I have examined a certified copy of the proceedings for the issuance of this Bond, including the form of the Bond; that such proceedings and such Bond show lawful authority for the issuance thereof; and that this Bond has been issued in accordance with law, and is a valid and binding obligation according to its tenor and terms; and is hereby approved.

Dated July 2, 1938.

(S.) Mac Q. Williamson, Attorney General of the State of Oklahoma."

and which is endorsed upon each of the bonds of the Grand River Dam Authority, described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of: \$2,000,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
12-22	\$ 11,000	April 1, 1943
88-105	18,000	April 1, 1944
198-215	18,000	April 1, 1945
309-325	17,000	April 1, 1946
419-435	17,000	April 1, 1947
544-577	34,000	April 1, 1948
755-787	33,000	April 1, 1949
965-998	34,000	April 1, 1950

Numbers (all inclusive).	Amount	Maturity Date
1175-1208	34,000	April 1, 1951
1402-1452	51,000	April 1, 1952
1722-1772	51,000	April 1, 1953
2042-2092	51,000	April 1, 1954
2362-2413	52,000	April 1, 1955
2683-2733	51,000	April 1, 1956
3019-3087	69,000	April 1, 1957
3450-3517	68,000	April 1, 1958
3880-3948	69,000	April 1, 1959
4310-4378	69,000	April 1, 1960
4740-4808	69,000	April 1, 1961
5187-5272	86,000	April 1, 1962
5727-5813	87,000	April 1, 1963
6267-6353	87,000	April 1, 1964
6808-6893	86,000	April 1, 1965
[fol. 97] 7348-7433	86,000	April 1, 1966
7905-8008	104,000	April 1, 1967
8555-8658	104,000	April 1, 1968
9205-9308	104,000	April 1, 1969
9855-9958	104,000	April 1, 1970
10505-10608	104,000	April 1, 1971
11155-11258	104,000	April 1, 1972
11829-11956	128,000	April 1, 1973

Interest rate: 4 per centum per annum; payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938.

Witness my signature this 12th day of July, 1939.

Mac Q. Williamson, Attorney General of the State of Oklahoma.

Signature guaranteed as that of the Attorney General of the State of Oklahoma.

First National Bank & Trust Co., Oklahoma City, Okla., Member, Federal Reserve System, by Hugh L. Harrell, Vice-President. (Seal.)

[fol. 98]

#### EXHIBIT B

#### Signature and No-Litigation Certificate

I, Ray McNaughton, the undersigned Chairman of the Board of Directors of the Grand River Dam Authority, do

hereby certify that on the 6th day of July, 1938, I, as such Chairman, and Owen L. Butler, as Secretary of said Authority, officially signed the bonds of said Grand River Dam Authority, which bonds are described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of: \$2,000,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
12-22	\$ 11,000	April 1, 1943
88-105	18,000	April 1, 1944
198-215	18,000	April 1, 1945
309-325	17,000	April 1, 1946
419-435	17,000	April 1, 1947
544-577	34,000	April 1, 1948
755-787	33,000	April 1, 1949
965-998	34,000	April 1, 1950
1175-1208	34,000	April 1, 1951
1402-1452	51,000	April 1, 1952
1722-1772	51,000	April 1, 1953
2042-2092	51,000	April 1, 1954
2362-2413	52,000	April 1, 1955
2683-2733	51,000	April 1, 1956
3019-3087	69,000	April 1, 1957
3450-3517	68,000	April 1, 1958
3880-3948	69,000	April 1, 1959
4310-4378	69,000	April 1, 1960
4740-4808	69,000	April 1, 1961
5187-5272	86,000	April 1, 1962
5727-5813	87,000	April 1, 1963
6267-6353	87,000	April 1, 1964
6808-6893	86,000	April 1, 1965
7348-7433	86,000	April 1, 1966
7905-8008	104,000	April 1, 1967
8555-8658	104,000	April 1, 1968
9205-9308	104,000	April 1, 1969
9855-9958	104,000	April 1, 1970
10505-10608	104,000	April 1, 1971
11155-11258	104,000	April 1, 1972
11829-11956	128,000	April 1, 1973



Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938.

being at the date of such signing the duly chosen, qualified and acting officers stated above and authorized to execute said bonds.

[fol. 99] I, the undersigned Sam D. Rose, hereby certify that I am the duly qualified and acting Secretary and Treasurer of the Grand River Dam Authority. I further certify that I have adopted and do adopt as my signature, the signature of Owen L. Butler as it appears upon the above described bonds as Secretary of said Authority and the facsimile signature of said Owen L. Butler as it appears upon the interest coupons attached to said bonds as Treasurer of said Authority.

We, the undersigned Ray McNaughton and Sam D. Rose, further certify that no litigation of any nature is now pending or threatened (either in State or Federal Courts) restraining or enjoining the issuance, sale, execution or delivery of said bonds, or the construction or operation of the Project (PWA Docket No. Okla. 1097-P-DS) to aid in financing the construction of which said bonds were authorized and issued, or the fixing, the charging or the collection of adequate rates or charges to pay the interest on or principal of said bonds, or the costs of operation or maintenance of, or the setting aside of depreciation or other reserves for said project or in any manner questioning the authority or proceedings for the issuance, sale, execution or delivery of said bonds, or affecting the validity of the bonds, or the construction or operation of said project or the fixing, the charging or the collection of said rates or charges in any way; that neither the corporate existence nor the boundaries of said Grand River Dam Authority, nor the title of its present officers to their respective offices, is being contested, and that no proceedings or authority for the issuance, sale, execution or delivery of said bonds have or has been repealed, rescinded or revoked.

There are two injunction suits pending which do remotely affect the construction of minor portions of the Project.

First, a suit in the District Court of Craig County, Oklahoma by O. J. Pharoah v. the Authority seeking specific performance in his favor of Contract No. 9 (Elevation

Frisco Railway Tracks) upon the theory that the tentative or conditional award of that contract to him by the Authority on his bid constituted a binding contract between him and the Authority, under which vested rights accrue, and a permanent injunction against the Authority enjoining it from awarding the contract to any bidder other than Pharoah. A temporary injunction was denied by the Court and an appeal to the Supreme Court of the State prayed by Pharoah from the order of the Court denying that temporary injunction. The Court has entered an order in the case permitting Pharoah to amend his petition for a permanent injunction setting up additional facts and making additional parties. And the plaintiff, Pharoah, has filed an amended petition making Leo Sanders, Contractor, and H. H. Ferguson, Project Engineer, P. W. A., parties defendant, and asking for specific performance of the alleged contract with Pharoah, and a performance injunction against Sanders from proceeding with the performance of this contract, and a permanent injunction against the Authority from paying the contractor for any work done under said contract, and a permanent injunction enjoining the Project Engineer from communicating to the Authority any directions or orders of the Federal Emergency Administration of Public Works which in anywise tend to advise or direct the action of the Authority in connection with said contract. The contractor has filed a demurrer to the petition and the Project Engineer has filed a motion to dismiss. The motion to dismiss has been sustained by the court, and the Project Engineer dismissed from the suit.

Second, an injunction suit in the District Court of Mayes County, Oklahoma by Willis Thompson against the Authority and its contractor and subcontractor under Contract No. 7 (Construction of Dam and Power House) seeking a permanent injunction enjoining them from trespassing upon certain land owned by him near the West end of the dam, in the performance of certain work (grading and paving about five hundred (500) feet of roadway on his land) called for under Contract No. 7. A temporary injunction was denied by the Court and an answer has been filed making up the issues on the permanent injunction, but the case has not yet been tried. The Authority entered upon this property to do the work called for under Contract No. 7 relying upon an easement in writing executed

by Thompson, granting this property to the Board of County Commissioners of Mayes County, Oklahoma, for road and park purposes. And also relying upon permission granted by the Board of County Commissioners to the Authority to enter upon said land and grade and pave the roadway thereon called for under Contract No. 7. In a suit between [fol. 100] Willis Thompson and the Board of County Commissioners, to which the Authority was not a party, the Court recently held said easement valid as to the one hundred (100) foot road-way, but cancelled it as to the land granted for park purposes. Appeal has been prayed in that case to the Supreme Court. This litigation is of no consequence in its effect on the construction of the Project for the reason that whatever part of this land the Authority may need can be obtained by purchase or condemnation without materially delaying the construction work under Contract No. 7.

We Further Certify that the seal which has been impressed upon all of said bonds and upon this certificate is the legally adopted, proper and only official corporate seal.

Witness our hands and said corporate seal this 12th day of July, 1939.

Signature	Official Title	Expiration of Office
Ray McNaughton	Chairman	Dec. 31, 1939
Sam D. Rose	Secretary and Treasurer	Aug. 1, 1939

Signatures above and upon each of the above-described obligations guaranteed as those of the officers respectively designated above.

First National Bank, Miami, Oklahoma, Member Federal Reserve System. By Roy T. Wills, President. (Seal.)

[fol. 101]

(Revenue Bonds)

### EXHIBIT C

### Financial Certificate

I, Sam D. Rose, the undersigned Treasurer of the Grand River Dam Authority, hereby certify that there have been no changes in the financial condition of said Grand River Dam Authority, other than those incidental to the ordi-

nary conduct of its affairs, since the date of the last financial statement submitted to the Government as a part of its application for a loan and grant.

I Further Certify that the financial condition of said Grand River Dam Authority is at least as favorable as it was on the date of its application for a loan and grant from the Government.

I Further Certify that there is no default in the payment of principal or interest on any outstanding obligation or indebtedness of said Grand River Dam Authority.

In Witness Whereof, I have hereunto set my hand this 12th day of July, 1939.

Sam D. Rose, Treasurer.

Signature guaranteed as that of the Treasurer of the Grand River Dam Authority.

First National Bank of Miami, Oklahoma, Member Federal Reserve System. By Roy T. Wills, President. (Seal.)

[fol. 102]

EXHIBIT K

### Certificate of State Auditor

I, the undersigned Frank C. Carter, Do Hereby Certify that I am the duly appointed, qualified and acting State Auditor of the State of Oklahoma.

I Further Certify that I have adopted and do adopt as my signature, and as the signature of the State Auditor of the State of Oklahoma, the signature of C. C. Childers, as State Auditor, as it appears on the certificate on the reverse side of the bonds of the Grand River Dam Authority hereinafter described, which certificate reads as follows:

### "Certificate of State Auditor

UNITED STATES OF AMERICA,  
State of Oklahoma, ss:

I, the undersigned, State Auditor of the State of Oklahoma, hereby certify that there is on file and of record in my office a certificate of the Attorney General of the State of Oklahoma approving this Bond and the proceedings for the issuance thereof and certifying that this Bond and the



proceedings for the issuance thereof have been examined by him as required by law, and that he finds that this Bond has been issued in accordance with law and in conformity with the Constitution and Laws of the State of Oklahoma, and that it is a valid and binding special obligation of said Grand River Dam Authority, payable from the revenues pledged to its payment by and in the proceedings authorizing the same, and I do further certify that, on the 6th day of July, 1938, I registered this Bond. Witness my hand and seal of office, this 6th day of July, 1938.

(S.) C. C. Childers, State Auditor of the State of Oklahoma."

Said bonds are described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of: \$3,000,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
23-39	\$17,000	April 1, 1943
106-132	27,000	April 1, 1944
216-241	26,000	April 1, 1945
326-351	26,000	April 1, 1946
436-461	26,000	April 1, 1947
578-628	51,000	April 1, 1948
788-838	51,000	April 1, 1949
999-1048	50,000	April 1, 1950
1209-1258	50,000	April 1, 1951
[fol. 103] 1453-1529	77,000	April 1, 1952
1773-1849	77,000	April 1, 1953
2093-2169	77,000	April 1, 1954
2414-2490	77,000	April 1, 1955
2734-2809	76,000	April 1, 1956
3088-3191	104,000	April 1, 1957
3518-3620	103,000	April 1, 1958
3949-4051	103,000	April 1, 1959
4379-4481	103,000	April 1, 1960
4809-4911	103,000	April 1, 1961
5273-5402	130,000	April 1, 1962
5814-5943	130,000	April 1, 1963
6354-6483	130,000	April 1, 1964

Numbers (all inclusive)	Amount	Maturity Date
6894-7022	129,000	April 1, 1965
7434-7562	129,000	April 1, 1966
8009-8164	156,000	April 1, 1967
8659-8814	156,000	April 1, 1968
9309-9464	156,000	April 1, 1969
9959-10114	156,000	April 1, 1970
10609-10764	156,000	April 1, 1971
11259-11414	156,000	April 1, 1972
11957-12148	192,000	April 1, 1973

Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938.

I Further Certify that the seal of office of the State Auditor of the State of Oklahoma which has been impressed upon such certificate upon each of said bonds and also upon this certificate is the legally adopted, proper and only official seal of the office of the State Auditor of Oklahoma.

Witness my hand and the seal of office of the State Auditor of the State of Oklahoma this 18th day of August, 1939.

F. C. Carter, State Auditor of the State of Oklahoma.  
(Seal.)

Signature guaranteed as that of the State Auditor of the State of Oklahoma.

First National Bank & Trust Co., Oklahoma City,  
Okla., Member, Federal Reserve System. By Hugh  
L. Harrell, Vice President. (Seal.)

[fol. 104]

EXHIBIT J

### Opinion Regarding Outstanding Obligations

I, R. L. Davidson, General Counsel of the Grand River Dam Authority, Vinita, Oklahoma, do hereby certify that said Authority has not heretofore incurred any bonded indebtedness except Seven Million Dollars (\$7,000,000.00) of 4% revenue bonds heretofore and on the date hereof purchased by the United States of America, and that I am familiar with the outstanding liabilities of said Authority and in my opinion none of such liabilities is represented or

secured by a charge or lien upon or pledge of the whole or any part of the revenues of the Authority to be derived from its flood control and hydro-electric power project identified as P. W. A. Docket No. Okla. 1097-P-DS, or otherwise, except the Seven Million Dollars (\$7,000,000.00) of 4% revenue bonds of the Authority purchased as aforesaid by the United States of America, which are secured ratably, when issued, with the remainder of the authorized issue of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) of such 4% revenue bonds by a pledge of the revenues of the Authority under and by virtue of that certain Indenture, dated as of April 1, 1933, by and between Grand River Dam Authority and The First National Bank of Miami, of Miami, Oklahoma, as Trustee.

This the 18th day of August, 1939.

R. L. Davidson, General Counsel of Grand River  
Dam Authority.

[fol. 105]

EXHIBIT G

Certificate of Attorney General of the State of Oklahoma

I, the undersigned Mac Q. Williamson, do hereby certify that I am, and was at the time of my execution of the certificate on each of bonds hereinafter described, the duly chosen, qualified and acting Attorney General of the State of Oklahoma and ex-officio Bond Commissioner of the State of Oklahoma. I further certify that on the 5th day of July, 1938, I officially signed and dated, as said Attorney General, the certificate which reads as follows:

"State of Oklahoma, Office of the Attorney General, Bond  
Department

I, the undersigned, Attorney General of the State of Oklahoma, hereby certify that I have examined a certified copy of the proceedings for the issuance of this Bond, including the form of the Bond; that such proceedings and such Bond show lawful authority for the issuance thereof; and that this Bond has been issued in accordance with law, and is a valid and binding obligation according to its tenor and terms; and is hereby approved.

Dated, July 2, 1938.

(S.) Mac Q. Williamson, Attorney General of the  
State of Oklahoma."

and which is endorsed upon each of the bonds of the Grand River Dam Authority, described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of: \$3,000,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
23-39	\$17,000	April 1, 1943
106-132	27,000	April 1, 1944
216-241	26,000	April 1, 1945
326-351	26,000	April 1, 1946
436-461	26,000	April 1, 1947
578-628	51,000	April 1, 1948
738-838	51,000	April 1, 1949
999-1048	50,000	April 1, 1950
1209-1258	50,000	April 1, 1951
1453-1529	77,000	April 1, 1952
1773-1849	77,000	April 1, 1953
2093-2169	77,000	April 1, 1954
2414-2490	77,000	April 1, 1955
2734-2809	76,000	April 1, 1956
3088-3191	104,000	April 1, 1957
3518-3620	103,000	April 1, 1958
3949-4051	103,000	April 1, 1959
4379-4481	103,000	April 1, 1960
4809-4911	103,000	April 1, 1961
5273-5402	130,000	April 1, 1962
5814-5943	130,000	April 1, 1963
6354-6483	130,000	April 1, 1964
6894-7022	129,000	April 1, 1965
[fol. 106] 7434-7562	129,000	April 1, 1966
8009-8164	156,000	April 1, 1967
8659-8814	156,000	April 1, 1968
9309-9464	156,000	April 1, 1969
9959-10114	156,000	April 1, 1970
10609-10764	156,000	April 1, 1971
11259-11414	156,000	April 1, 1972
11957-12148	192,000	April 1, 1973

Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938.



Witness my signature this 18th day of August, 1939.  
 Mac Q. Williamson, Attorney General of the State  
 of Oklahoma.

Signature guaranteed as that of the Attorney General  
 of the State of Oklahoma.

First National Bank & Trust Co., Oklahoma City,  
 Okla., Member, Federal Reserve System. By Hugh  
 L. Harrell, Vice President. (Seal.)

[fol. 107]

# EXHIBIT B

## Signature and No-Litigation Certificate

I, Sam D. Rose, the undersigned Secretary and Treasurer  
 of the Grand River Dam Authority, do hereby certify that  
 I have examined the signatures of Ray McNaughton, as  
 Chairman of the Board of Directors of said Authority, and  
 Owen L. Butler, as Secretary of said Authority, upon each  
 of the following described bonds of said Authority, that I  
 know the signatures of said parties and I do hereby verify  
 the signatures on said bonds as their true and genuine  
 signatures:

Title of bonds: Grand River Dam Authority 4% Revenue  
 Bond.

In the amount of: \$3,000,000, being part of an author-  
 ized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
23-39	\$17,000	April 1, 1943
106-132	27,000	April 1, 1944
216-241	26,000	April 1, 1945
326-351	26,000	April 1, 1946
436-461	26,000	April 1, 1947
578-628	51,000	April 1, 1948
788-838	51,000	April 1, 1949
999-1048	50,000	April 1, 1950
1209-1258	50,000	April 1, 1951
1453-1529	77,000	April 1, 1952
1773-1849	77,000	April 1, 1953
2093-2169	77,000	April 1, 1954

Numbers (all inclusive)	Amount	Maturity Date
2414-2490	77,000	April 1, 1955
2734-2809	76,000	April 1, 1956
3088-3191	104,000	April 1, 1957
3518-3620	103,000	April 1, 1958
3949-4051	103,000	April 1, 1959
4379-4481	103,000	April 1, 1960
4809-4911	103,000	April 1, 1961
5273-5402	130,000	April 1, 1962
5814-5943	130,000	April 1, 1963
6354-6483	130,000	April 1, 1964
6894-7022	129,000	April 1, 1965
7434-7562	129,000	April 1, 1966
8009-8164	156,000	April 1, 1967
8659-8814	156,000	April 1, 1968
9309-9464	156,000	April 1, 1969
9959-10114	156,000	April 1, 1970
10609-10764	156,000	April 1, 1971
11259-11414	156,000	April 1, 1972
11957-12148	192,000	April 1, 1973

Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938.

I further certify that I have adopted and do adopt as my signature, the signature of Owen L. Butler as it appears upon the above described bonds as Secretary of said Authority and the facsimile signature of said Owen L. Butler as it appears upon the interest coupons attached to said bonds as Treasurer of said Authority.

[fol. 108] I further certify that no litigation of any nature is now pending or threatened (either in State or Federal Courts) restraining or enjoining the issuance, sale, execution or delivery of said bonds, or the construction or operation of the Project (PWA Docket No. Okla. 1097-P-DS) to aid in financing the construction of which said bonds were authorized and issued, or the fixing, the charging or the collection of adequate rates or charges to pay the interest on or principal of said bonds, or the costs of operation or maintenance of, or the setting aside of depreciation or other reserves for said project or in any manner questioning the authority or proceedings for the issuance, sale, execution or delivery of said bonds, or affecting the validity of the bonds, or the construction or operation of said project or

the fixing, the charging or the collection of said rates or charges in any way; that neither the corporate existence nor the boundaries of said Grand River Dam Authority, nor the title of its present officers to their respective offices, is being contested, and that no proceedings or authority for the issuance, sale, execution or delivery of said bonds have or has been repealed, rescinded, or revoked.

There are two injunction suits pending which do remotely affect the construction of minor portions of the Project.

First, a suit in the District Court of Craig County, Oklahoma by O. J. Pharoah v. the Authority seeking specific performance in his favor of Contract No. 9 (Elevation Frisco Railway Tracks) upon the theory that the tentative or conditional award of that contract to him by the Authority on his bid constituted a binding contract between him and the Authority, under which vested rights accrue, and a permanent injunction against the Authority enjoining it from awarding the contract to any bidder other than Pharoah. A temporary injunction was denied by the Court and an appeal to the Supreme Court of the State prayed by Pharoah from the order of the Court denying the temporary injunction. The Court has entered an order in the case permitting Pharoah to amend his petition for a permanent injunction setting up additional facts and making additional parties. And the plaintiff, Pharoah, has filed an amended petition making Leo Sanders, Contractor, and H. H. Ferguson, Project Engineer, P. W. A., parties defendant, and asking for specific performance of the alleged contract with Pharoah, and a performance injunction against Sanders from proceeding with the performance of this contract, and a permanent injunction against the Authority from paying the contractor for any work done under said contract, and a permanent injunction enjoining the Project Engineer from communicating to the Authority any directions or orders of the Federal Emergency Administration of Public Works which in anywise tend to advise or direct the action of the Authority in connection with said contract. The contractor has filed a demurrer to the petition and the Project Engineer has filed a motion to dismiss. The motion to dismiss has been sustained by the court, and the Project Engineer dismissed from the suit.

Second, an injunction suit in the District Court of Mayes County, Oklahoma by Willis Thompson against the Author-

ity and its contractor and subcontractor under Contract No. 7 (Construction of Dam and Power House) seeking a permanent injunction enjoining them from trespassing upon certain land owned by him near the West end of the dam, in the performance of certain work (grading and paving about five hundred (500) feet of roadway on his land) called for under Contract No. 7. A temporary injunction was denied by the Court and an answer has been filed making up the issues on the permanent injunction, but the case has not yet been tried. The Authority entered upon this property to do the work called for under Contract No. 7 relying upon an easement in writing executed by Thompson granting this property to the Board of County Commissioners of Mayes County, Oklahoma, for road and park purposes. And also relying upon permission granted by the Board of County Commissioners to the Authority to enter upon said land and grade and pave the roadway thereon called for under Contract No. 7. In a suit between Willis Thompson and the Board of County Commissioners, to which the Authority was not a party, the Court recently held said easement valid as to the one hundred (100) foot road-way, but cancelled it as to the land granted for park purposes. Appeal has been prayed in that case to the Supreme Court. This litigation is of no consequence in its effect on the construction of the Project for the reason [fol. 109] that whatever part of this land the Authority may need can be obtained by purchase or condemnation without materially delaying the construction work under Contract No. 7.

There is one suit pending in the District Court of Ottawa County, Oklahoma wherein the Authority is plaintiff and James Robert Audrain and Lura Mae Audrain are defendants (No. 14,869), for specific performance of an option from the Audrains to the Authority to purchase 69.48 acres of land in the reservoir area, in which the Audrains in their answer alleged the act creating the Authority is unconstitutional, and that the Authority has not the legal capacity to maintain the suit. There is no merit in this contention because the Supreme Court of Oklahoma, in Sheldon vs. Grand River Dam Authority, 76 Pac. (2d) 355, held the Act constitutional and the Authority a legal corporate entity.

I further certify that Ray McNaughton and Owen L. Butler were the duly chosen, qualified and acting Chair-



man of the Board of Directors of the Grand River Dam Authority and Secretary of said Authority, respectively, on the 6th day of July, 1938.

I further certify that the seal which has been impressed upon all of said bonds and upon this certificate is the legally adopted, proper and only official corporate seal.

Witness my hand and said corporate seal this 18th day of August, 1939.

Signature, Sam D. Rose. Official Title, Secretary and Treasurer. Expiration of Office, 1-1-40. (Seal.)

Signature above guaranteed as that of Sam D. Rose, Secretary and Treasurer of the Grand River Dam Authority and signatures upon each of the above described obligations guaranteed as those of Ray McNaughton and Owen L. Butler, Chairman of the Board of Directors and Secretary, respectively, of the Grand River Dam Authority.

The First National Bank of Miami, Miami, Oklahoma, Member Federal Reserve System. By R. J. Tuthill, Vice-President. (Seal.)

[fol. 110]

## EXHIBIT B-2

### Signature and No-Litigation Certificate

I, Ray McNaughton, the undersigned Chairman of the Board of Directors of the Grand River Dam Authority, do hereby certify that on the 6th day of July, 1938, I, as such Chairman, and Owen L. Butler, as Secretary of said Authority, officially signed the bonds of said Grand River Dam Authority, which bonds are described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of: \$3,000,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
23-39	\$17,000	April 1, 1943
106-132	27,000	April 1, 1944
216-241	26,000	April 1, 1945
326-351	26,000	April 1, 1946

Numbers (all inclusive)	Amount	Maturity Date
436-461	26,000	April 1, 1947
578-628	51,000	April 1, 1948
788-838	51,000	April 1, 1949
999-1048	50,000	April 1, 1950
1209-1258	50,000	April 1, 1951
1453-1529	77,000	April 1, 1952
1773-1849	77,000	April 1, 1953
2093-2169	77,000	April 1, 1954
2414-2490	77,000	April 1, 1955
2734-2809	76,000	April 1, 1956
3088-3191	104,000	April 1, 1957
3518-3620	103,000	April 1, 1958
3949-4051	103,000	April 1, 1959
4379-4481	103,000	April 1, 1960
4809-4911	103,000	April 1, 1961
5273-5402	130,000	April 1, 1962
5814-5943	130,000	April 1, 1963
6354-6483	130,000	April 1, 1964
6894-7022	129,000	April 1, 1965
7434-7562	129,000	April 1, 1966
8009-8164	156,000	April 1, 1967
8659-8814	156,000	April 1, 1968
9309-9464	156,000	April 1, 1969
9959-10114	156,000	April 1, 1970
10609-10764	156,000	April 1, 1971
11259-11414	156,000	April 1, 1972
11957-12148	192,000	April 1, 1973

Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938.

being at the date of such signing the duly chosen, qualified and acting officers stated above and authorized to execute said bonds.

I further certify that no litigation of any nature is now pending or threatened (either in State or Federal Courts) restraining or enjoining the issuance, sale, execution or delivery of said bonds, or the construction or operation of the Project (PWA Docket No. Okla. 1097-P-DS) to aid in financing the construction of which said bonds were authorized [fol. 111] ized and issued, or the fixing, the charging or the

collection of adequate rates or charges to pay the interest on or principal of said bonds, or the costs of operation or maintenance of, or the setting aside of depreciation or other reserves for said project or in any manner questioning the authority or proceedings for the issuance, sale, execution or delivery of said bonds, or affecting the validity of the bonds, or the construction or operation of said project or the fixing, the charging or the collection of said rates or charges in any way; that neither the corporate existence nor the boundaries of said Grand River Dam Authority, nor the title of its present officers to their respective offices, is being contested, and that no proceedings or authority for the issuance, sale, execution or delivery of said bonds have or has been repealed, rescinded or revoked.

There are two injunction suits pending which do remotely affect the construction of minor portions of the Project.

First, a suit in the District Court of Craig County, Oklahoma by O. J. Pharoah v. the Authority seeking specific performance in his favor of Contract No. 9 (Elevation Frisco Railway Tracks) upon the theory that the tentative or conditional award of that contract to him by the Authority on his bid constituted a binding contract between him and the Authority, under which vested rights accrue, and a permanent injunction against the Authority enjoining it from awarding the contract to any bidder other than Pharoah. A temporary injunction was denied by the Court and an appeal to the Supreme Court of the State prayed by Pharoah from the order of the Court denying the temporary injunction. The Court has entered an order in the case permitting Pharoah to amend his petition for a permanent injunction setting up additional facts and making additional parties. And the plaintiff, Pharoah, has filed an amended petition making Leo Sanders, Contractor, and H. H. Ferguson, Project Engineer, P. W. A., parties defendant, and asking for specific performance of the alleged contract with Pharoah, and a performance injunction against Sanders from proceeding with the performance of this contract, and a permanent injunction against the Authority from paying the contractor for any work done under said contract, a permanent injunction enjoining the Project Engineer from communicating to the Authority any directions or orders of the Federal Emergency Administration of Public Works which in anywise tend to

advise or direct the action of the Authority in connection with said contract. The contractor has filed a demurrer to the petition and the Project Engineer has filed a motion to dismiss. The motion to dismiss has been sustained by the court, and the Project Engineer dismissed from the suit.

Second, an injunction suit in the District Court of Mayes County, Oklahoma by Willis Thompson against the Authority and its contractor and subcontractor under Contract No. 7 (Construction of Dam and Power House) seeking a permanent injunction enjoining them from trespassing upon certain land owned by him near the West end of the dam, in the performance of certain work (grading and paving about five hundred (500) feet of roadway on his land) called for under Contract No. 7. A temporary injunction was denied by the Court and an answer has been filed making up the issues on the permanent injunction, but the case has not yet been tried. The Authority entered upon this property to do the work called for under Contract No. 7 relying upon an easement in writing executed by Thompson granting this property to the Board of County Commissioners of Mayes County, Oklahoma, for road and park purposes. And also relying upon permission granted by the Board of County Commissioners to the Authority to enter upon said land and grade and pave the roadway thereon called for under Contract No. 7. In a suit between Willis Thompson and the Board of County Commissioners, to which the Authority was not a party, the Court recently held said easement valid as to the one hundred (100) foot roadway, but cancelled it as to the land granted for park purposes. Appeal has been prayed in that case to the Supreme Court. This litigation is of no consequence in its effect on the construction of the Project for the reason that whatever part of this land the Authority may need can be obtained by purchase or condemnation without materially delaying the construction work under Contract No. 7.

There is one suit pending in the District Court of Ottawa County, Oklahoma wherein the Authority is plaintiff and James Robert Audrain and Lura Mae Audrain are defendants (No. 14,869), for specific performance of an option from the Audrains to the Authority to purchase 69.48 acres of land in the reservoir area, in which the Audrains in their [fol. 112] answer alleged the act creating the Authority is



unconstitutional, and that the Authority has not the legal capacity to maintain the suit. There is no merit in this contention because the Supreme Court of Oklahoma, in *Sheldon vs. Grand River Dam Authority*, 76 Pac. (2d) 355, held the Act constitutional and the Authority a legal corporate entity.

I further certify that I am now and was on the date as of which this certificate is executed the duly chosen, qualified and active Chairman of the Board of Directors of the Grand River Dam Authority.

Executed as of August 18, 1939.

Signature, Ray McNaughton, Official Title, Chairman. Expiration of Office, Dec. 31, 1939.

Signature above guaranteed as that of Ray McNaughton, Chairman of the Board of Directors of the Grand River Dam Authority.

The First National Bank of Miami, Miami, Oklahoma, Member Federal Reserve System. By R. J. Tuthill, Vice-President.

[fol. 113]

(Revenue Bonds)

### EXHIBIT C

#### Financial Certificate

I, Sam D. Rose, the undersigned Treasurer of the Grand River Dam Authority, hereby certify that there have been no changes in the financial condition of said Grand River Dam Authority, other than those incidental to the ordinary conduct of its affairs, since the date of the last financial statement submitted to the Government as a part of its application for a loan and grant.

I Further Certify that the financial condition of said Grand River Dam Authority is at least as favorable as it was on the date of its application for a loan and grant from the Government.

I Further Certify that there is no default in the payment of principal or interest on any outstanding obligation or indebtedness of said Grand River Dam Authority.

In Witness Whereof, I have hereunto set my hand this 18th day of August, 1939.

Sam D. Rose, Treasurer.

Signature guaranteed as that of the Treasurer of the Grand River Dam Authority.

First National Bank of Miami, Oklahoma, Member Federal Reserve System. By R. J. Tuthill, Vice-President. (Seal.)

[fol. 114]

# EXHIBIT K

## Certificate of State Auditor

I, the undersigned Frank C. Carter, do Hereby Certify that I am the duly appointed, qualified and acting State Auditor of the State of Oklahoma.

I Further Certify that I have adopted and do adopt as my signature, and as the signature of the State Auditor of the State of Oklahoma, the signature of C. C. Childers, as State Auditor, as it appears on the certificate on the reverse side of the bonds of the Grand River Dam Authority hereinafter described, which certificate reads as follows:

## "Certificate of State Auditor

UNITED STATES OF AMERICA,  
State of Oklahoma, ss:

I, the undersigned, State Auditor of the State of Oklahoma, hereby certify that there is on file and of record in my office a certificate of the Attorney General of the State of Oklahoma approving this Bond and the proceedings for the issuance thereof and certifying that this Bond and the proceedings for the issuance thereof have been examined by him as required by law, and that he finds that this Bond has been issued in accordance with law and in conformity with the Constitution and Laws of the State of Oklahoma, and that it is a valid and binding special obligation of said Grand River Dam Authority, payable from the revenues pledged to its payment by and in the proceedings authorizing the same, and I do further certify that, on the 6th day of

July, 1938, I registered this Bond. Witness my hand and seal of office, this 6th day of July, 1938.

(S.) C. C. Childers, State Auditor of the State of Oklahoma."

Said bonds are described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of \$3,000,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated; April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
40-56	\$17,000	4-1-43
133-159	27,000	4-1-44
242-267	26,000	4-1-45
352-377	26,000	4-1-46
462-487	26,000	4-1-47
629-679	51,000	4-1-48
839-889	51,000	4-1-49
1049-1098	50,000	4-1-50
1259-1308	50,000	4-1-51
[fol. 115]		
1530-1606	77,000	4-1-52
1850-1926	77,000	4-1-53
2170-2246	77,000	4-1-54
2491-2567	77,000	4-1-55
2810-2885	76,000	4-1-56
3192-3295	104,000	4-1-57
3621-3723	103,000	4-1-58
4052-4154	103,000	4-1-59
4482-4584	103,000	4-1-60
4912-5014	103,000	4-1-61
5403-5532	130,000	4-1-62
5944-6073	130,000	4-1-63
6484-6613	130,000	4-1-64
7023-7151	129,000	4-1-65
7563-7691	129,000	4-1-66
8165-8320	156,000	4-1-67
8815-8970	156,000	4-1-68
9465-9620	156,000	4-1-69
10115-10270	156,000	4-1-70
10765-10920	156,000	4-1-71
11415-11570	156,000	4-1-72
12149-12340	192,000	4-1-73

Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938.

I Further Certify that the seal of office of the State Auditor of the State of Oklahoma which has been impressed upon such certificate upon each of said bonds and also upon this certificate is the legally adopted, proper and only official seal of the office of the State Auditor of Oklahoma.

Witness my hand and the seal of office of the State Auditor of the State of Oklahoma this 18th day of October, 1939.

F. C. Carter, State Auditor of the State of Oklahoma. (Seal.)

Signature guaranteed as that of the State Auditor of the State of Oklahoma.

First National Bank & Trust Co., Oklahoma City, Okla., Member, Federal Reserve System; by Hugh L. Harrell, Vice-President.

[fol. 116]

#### EXHIBIT J

#### Opinion Regarding Outstanding Obligations

I, R. L. Davidson, General Counsel of the Grand River Dam Authority, Vinita, Oklahoma, do hereby certify that said Authority has not heretofore incurred any bonded indebtedness except Ten Million Dollars (\$10,000,000.00) of 4% revenue bonds heretofore and on the date hereof purchased by the United States of America, and that I am familiar with the outstanding liabilities of said Authority and in my opinion none of such liabilities is represented or secured by a charge or lien upon or pledge of the whole or any part of the revenues of the Authority to be derived from its flood control and hydro-electric power project identified as P. W. A. Docket No. Okla. 1097-P-DS, or otherwise, except the Ten Million Dollars (\$10,000,000.00) of 4% revenue bonds of the Authority purchased as aforesaid by the United States of America, which are secured ratably, when issued, with the remainder of the authorized issue of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) of such 4% revenue bonds by a pledge of the revenues of the Authority under and by virtue of that certain Indenture,



dated as of April 1, 1938, by and between Grand River Dam Authority and The First National Bank of Miami, of Miami, Oklahoma, as Trustee.

This the 18th day of October, 1939.

R. L. Davidson, General Counsel of Grand River Dam Authority.

[fol. 117]

### EXHIBIT G

Certificate of Attorney General of the State of Oklahoma

I, the undersigned Mac Q. Williamson, do hereby certify that I am, and was at the time of my execution of the certificate on each of bonds hereinafter described, the duly chosen, qualified and acting Attorney General of the State of Oklahoma and ex-officio Bond Commissioner of the State of Oklahoma. I further certify that on the 5th day of July, 1938, I officially signed and dated, as said Attorney General, the certificate which reads as follows:

"State of Oklahoma, Office of the Attorney General Bond Department

I, the undersigned, Attorney General of the State of Oklahoma, hereby certify that I have examined a certified copy of the proceedings for the issuance of this Bond, including the form of the Bond; that such proceedings and such Bond show lawful authority for the issuance thereof; and that this Bond has been issued in accordance with law, and is a valid and binding obligation according to its tenor and terms; and is hereby approved.

Dated, July 2, 1938.

(S.) Mac Q. Williamson, Attorney General of the State of Oklahoma."

and which is endorsed upon each of the bonds of the Grand River Dam Authority, described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the Amount of \$3,000,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
40-56	\$17,000	4-1-43
133-159	27,000	4-1-44
242-267	26,000	4-1-45
352-377	26,000	4-1-46
462-487	26,000	4-1-47
629-679	51,000	4-1-48
839-889	51,000	4-1-49
1049-1098	50,000	4-1-50
1259-1308	50,000	4-1-51
1530-1606	77,000	4-1-52
1850-1926	77,000	4-1-53
2170-2246	77,000	4-1-54
2491-2567	77,000	4-1-55
2810-2885	76,000	4-1-56
3192-3295	104,000	4-1-57
3621-3723	103,000	4-1-58
4052-4154	103,000	4-1-59
4482-4584	103,000	4-1-60
4912-5014	103,000	4-1-61
5403-5532	130,000	4-1-62
5944-6073	130,000	4-1-63
6484-6613	130,000	4-1-64
7023-7151	129,000	4-1-65
7563-7691	129,000	4-1-66
8165-8320	156,000	4-1-67
8815-8970	156,000	4-1-68
9465-9620	156,000	4-1-69
10115-10270	156,000	4-1-70
10765-10920	156,000	4-1-71
[fol. 118] 11415-11570	156,000	4-1-72
12149-12340	192,000	4-1-73

Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938.

Witness my signature this 18th day of October, 1939.

Mae Q. Williamson, Attorney General of the State of Oklahoma.

Signature guaranteed as that of the Attorney General of the State of Oklahoma.

First National Bank & Trust Co., Oklahoma City, Okla., Member, Federal Reserve System, by Hugh L. Harrell, Vice President.

[fol. 119]

## EXHIBIT B

## Signature and No-Litigation Certificate

I, Ray McNaughton, the undersigned Chairman of the Board of Directors of the Grand River Dam Authority, do hereby certify that on the 6th day of July, 1938, I, as such Chairman, and Owen L. Butler, as Secretary of said Authority, officially signed the bonds of said Grand River Dam Authority, which bonds are described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of \$3,000,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
40-56	\$17,000	4-1-43
133-159	27,000	4-1-44
242-267	26,000	4-1-45
352-377	26,000	4-1-46
462-487	26,000	4-1-47
629-679	51,000	4-1-48
839-889	51,000	4-1-49
1049-1098	50,000	4-1-50
1259-1308	50,000	4-1-51
1530-1606	77,000	4-1-52
1850-1926	77,000	4-1-53
2170-2246	77,000	4-1-54
2491-2567	77,000	4-1-55
2810-2885	76,000	4-1-56
3192-3295	104,000	4-1-57
3621-3723	103,000	4-1-58
4052-4154	103,000	4-1-59
4482-4584	103,000	4-1-60
4912-5014	103,000	4-1-61
5403-5532	130,000	4-1-62
5944-6073	130,000	4-1-63
6484-6613	130,000	4-1-64
7023-7151	129,000	4-1-65
7563-7691	129,000	4-1-66
8165-8320	156,000	4-1-67
8815-8970	156,000	4-1-68
9465-9620	156,000	4-1-69

Numbers (all inclusive)	Amount	Maturity Dates
10115-10270	156,000	4-1-70
10765-10920	156,000	4-1-71
11415-11570	156,000	4-1-72
12149-12340	192,000	4-1-73

Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938,

being at the date of such signing the duly chosen, qualified and acting officers stated above and authorized to execute said bonds.

[fol. 120] I, the undersigned, Sam D. Rose, hereby certify that I am the duly qualified and acting Secretary and Treasurer of the Grand River Dam Authority. I further certify that I have adopted and do adopt as my signature, the signature of Owen L. Butler as it appears upon the above described bonds as Secretary of said Authority and the facsimile signature of said Owen L. Butler as it appears upon the interest coupons attached to said bonds as Treasurer of said Authority.

We, the undersigned, Ray McNaughton and Sam D. Rose, further certify that no litigation of any nature is now pending or threatened (either in State or Federal Courts) restraining or enjoining the issuance, sale, execution or delivery of said bonds, or the construction or operation of the Project (PWA Docket No. Okla. 1097-P-DS) to aid in financing the construction of which said bonds were authorized and issued, or the fixing, the charging or the collection of adequate rates or charges to pay the interest on or principal of said bonds, or the costs of operation or maintenance of, or the setting aside of depreciation or other reserves for said project or in any manner questioning the authority or proceedings for the issuance, sale, execution or delivery of said bonds, or affecting the validity of the bonds, or the construction or operation of said project or the fixing, the charging or the collection of said rates or charges in any way; that neither the corporate existence nor the boundaries of said Grand River Dam Authority, nor the title of its present officers to their respective offices, is being contested, and that no proceedings or authority for the issuance, sale,



execution or delivery of said bonds have or has been repealed, rescinded or revoked.

There are two injunction suits pending which do remotely affect the construction of minor portions of the Project:

First, an injunction suit in the District Court of Mayes County, Oklahoma, by Willis Thompson against the Authority and its contractor and subcontractor under Contract No. 7 (Construction of Dam and Power House) seeking a permanent injunction enjoining them from trespassing upon certain land owned by him near the West end of the dam, in the performance of certain work (grading and paving about five hundred (500) feet of roadway on his land) called for under Contract No. 7. A temporary injunction was denied by the Court and an answer has been filed making up the issues on the permanent injunction, but the case has not yet been tried. The Authority entered upon this property to do the work called for under Contract No. 7 relying upon an easement in writing executed by Thompson granting this property to the Board of County Commissioners of Mayes County, Oklahoma, for road and park purposes. And also relying upon permission granted by the Board of County Commissioners to the Authority to enter upon said land and grade and pave the roadway thereon called for under Contract No. 7. In a suit between Willis Thompson and the Board of County Commissioners, to which the Authority was not a party, the Court recently held said easement valid as to the one hundred (100) foot roadway but cancelled it as to the land granted for park purposes. Appeal has been prayed in that case to the Supreme Court. This litigation is of no consequence in its effect on the construction of the Project for the reason that whatever part of this land the Authority may need can be obtained by purchase or condemnation without materially delaying the construction work under Contract No. 7.

Second, the Authority has instituted a condemnation proceeding in the District Court of Ottawa County, Oklahoma, to condemn 32.5 acres of land belonging to the Victor Heirs as a right-of-way for the relocated tracks of the Frisco Railway Company. The commissioners were appointed and made their award in the sum of Three Thousand Forty Dollars (\$3,040.00). The Victors immediately, and before we could pay the money into court and obtain possession, filed in the condemnation proceeding an application for a temporary injunction to enjoin the Authority from entering

into possession of said land on the ground that the Authority did not possess the power to condemn a right-of-way for the Frisco Railway Company, but that the Frisco Railway Company would have to institute and maintain the proceedings in its own name for its own use and benefit. After the application was filed and the restraining order issued the Authority paid the condemnation money into court. Thereafter, upon a hearing for the application for a temporary injunction, the court granted the temporary injunction enjoining the Authority from entering into possession of said property until further order of the court, on the ground [fol. 121] that the Authority did not possess the power to condemn for the Frisco Railway Company. The court fixed the injunction bond at Twenty-Five Thousand Dollars (\$25,000.00) and gave the defendants two days in which to make it, which time expires with Wednesday of this week. It is the intention of the Authority to appeal from the order granting the temporary injunction to the Supreme Court of Oklahoma.

There is one suit pending in the District Court of Ottawa County, Oklahoma, wherein the Authority is plaintiff and James Robert Audrain and Lura Mae Audrain are defendants (No. 14,869), for specific performance of an option from the Audrains to the Authority to purchase 69.48 acres of land in the reservoir area, in which the Audrains in their answer alleged the act creating the Authority is unconstitutional, and that the Authority has not the legal capacity to maintain the suit. There is no merit in this contention because the Supreme Court of Oklahoma, in *Sheldon vs. Grand River Dam Authority*, 76 Pac. (2d) 355, held the Act constitutional and the Authority a legal corporate entity.

We Further Certify that the seal which has been impressed upon all of said bonds and upon this certificate is the legally adopted, proper and only official corporate seal.

Witness our hands and said corporate seal this 18th day of October, 1939.

Signature  
Ray McNaughton  
Sam D. Rose

Official Title  
Chairman  
Secretary and Treasurer

Expiration  
of Office  
December 31, 1939  
January 1, 1940

Signatures above guaranteed as those of Ray McNaughton and Sam D. Rose, Chairman of the Board of Directors and Secretary and Treasurer of the Grand River Dam Authority, respectively, and signatures upon each of the above

described obligations guaranteed as those of said Ray McNaughton and Owen L. Butler, former Secretary and Treasurer of said Authority.

First National Bank, Miami, Oklahoma, Member  
Federal Reserve System, by Roy T. Wills, President.

[fol. 122]

(Revenue Bonds)

EXHIBIT C

Financial Certificate

I, Sam D. Rose, the undersigned Treasurer of the Grand River Dam Authority, hereby certify that there have been no changes in the financial condition of said Grand River Dam Authority, other than those incidental to the ordinary conduct of its affairs, since the date of the last financial statement submitted to the Government as a part of its application for a loan and grant.

I Further Certify that the financial condition of said Grand River Dam Authority is at least as favorable as it was on the date of its application for a loan and grant from the Government.

I Further Certify that there is no default in the payment of principal or interest on any outstanding obligation or indebtedness of said Grand River Dam Authority.

In Witness Whereof, I have hereunto set my hand this 18th day of October, 1939.

Sam D. Rose, Treasurer.

Signature guaranteed as that of the Treasurer of the Grand River Dam Authority.

First National Bank of Miami, Oklahoma, Member  
Federal Reserve System, by Roy T. Wills, President.

[fol. 123]

EXHIBIT J

Opinion Regarding Outstanding Obligations

I, R. L. Davidson, General Counsel of the Grand River Dam Authority, Vinita, Oklahoma, do hereby certify that said Authority has not heretofore incurred any bonded in-

debtedness except Eleven Million Five Hundred Sixty-three Thousand Dollars (\$11,563,000.00) of 4% revenue bonds heretofore and on the date hereof purchased by the United States of America, and that I am familiar with the outstanding liabilities of said Authority and in my opinion none of such liabilities is represented or secured by a charge or lien upon or pledge of the whole or any part of the revenues of the Authority to be derived from its flood control and hydro-electric power project identified as P. W. A. Docket No. Okla. 1097-P-DS, or otherwise, except the Eleven Million Five Hundred Sixty-three Thousand Dollars (\$11,563,000.00) of 4% revenue bonds of the Authority purchased as aforesaid by the United States of America, which are secured ratably, when issued, with the remainder of the authorized issue of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) of such 4% revenue bonds by a pledge of the revenues of the Authority under and by virtue of that certain Indenture, dated as of April 1, 1938, by and between Grand River Dam Authority and The First National Bank of Miami, Miami, Oklahoma, as Trustee.

This the 15th day of January, 1940.

R. L. Davideon, General Counsel of Grand River Dam Authority.

[fol. 124]

# EXHIBIT G

## Certificate of Attorney General of the State of Oklahoma

I, the undersigned Mac Q. Williamson, do hereby certify that I am, and was at the time of my execution of the certificate on each of bonds hereinafter described, the duly chosen, qualified and acting Attorney General of the State of Oklahoma and ex-officio Bond Commissioner of the State of Oklahoma. I further certify that on the 5th day of July, 1938, I officially signed and dated, as said Attorney General, the certificate which reads as follows:

“State of Oklahoma, Office of the Attorney General, Bond Department

I, the undersigned, Attorney General of the State of Oklahoma, hereby certify that I have examined a certified copy of the proceedings for the issuance of this Bond, in-



cluding the form of the Bond; that such proceedings and such Bond show lawful authority for the issuance thereof; and that this Bond has been issued in accordance with law, and is a valid and binding obligation according to its tenor and terms; and is hereby approved.

Dated, July 2, 1938.

(S.) Mac Q. Williamson, Attorney General of the State of Oklahoma."

and which is endorsed upon each of the bonds of the Grand River Dam Authority, described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of: \$1,563,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
57-63	\$7,000	4-1-43
160-170	11,000	4-1-44
268-280	13,000	4-1-45
378-390	13,000	4-1-46
488-500	13,000	4-1-47
680-710	31,000	4-1-48
890-920	31,000	4-1-49
1099-1130	32,000	4-1-50
1309-1340	32,000	4-1-51
1607-1650	44,000	4-1-52
1927-1970	44,000	4-1-53
2247-2290	44,000	4-1-54
2568-2610	43,000	4-1-55
2886-2930	45,000	4-1-56
3296-3350	55,000	4-1-57
3724-3780	57,000	4-1-58
4155-4210	56,000	4-1-59
4585-4640	56,000	4-1-60
5015-5070	56,000	4-1-61
5533-5600	68,000	4-1-62
6074-6140	67,000	4-1-63
6614-6680	67,000	4-1-64
7152-7220	69,000	4-1-65
7692-7760	69,000	4-1-66

Numbers (all inclusive)	Amount	Maturity Dates
8321-8400	80,000	4-1-67
8971-9050	80,000	4-1-68
9621-9700	80,000	4-1-69
10271-10350	80,000	4-1-70
10921-11000	80,000	4-1-71
11571-11650	80,000	4-1-72
12341-12400	60,000	4-1-73

[fol. 125] Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938.

Witness my signature this 15th day of January, 1940.

Mac Q. Williamson, Attorney General of the State of Oklahoma.

Signature guaranteed as that of the Attorney General of the State of Oklahoma.

First National Bank & Trust Co., Oklahoma City, Okla., Member, Federal Reserve System, by Hugh L. Harrell, Vice President. (Seal.)

[fol. 126]

#### EXHIBIT B

#### Signature and No-Litigation Certificate

I, Ray McNaughton, the undersigned Chairman of the Board of Directors of the Grand River Dam Authority, do hereby certify that on the 6th day of July, 1938, I, as such Chairman, and Owen L. Butler, as Secretary of said Authority, officially signed the bonds of said Grand River Dam Authority, which bonds are described as follows:

Title of bonds: Grand River Dam Authority 4% Revenue Bond.

In the amount of: \$1,563,000, being part of an authorized issue of \$12,500,000 of said bonds.

Dated: April 1, 1938.

Denomination: \$1,000.

Numbers (all inclusive)	Amount	Maturity Dates
57-63	\$7,000	4-1-43
160-170	11,000	4-1-44
268-280	13,000	4-1-45

Numbers (all inclusive)	Amount	Maturity Dates
378-390	13,000	4-1-46
488-500	13,000	4-1-47
680-710	31,000	4-1-48
890-920	31,000	4-1-49
1099-1130	32,000	4-1-50
1309-1340	32,000	4-1-51
1607-1650	44,000	4-1-52
1927-1970	44,000	4-1-53
2247-2290	44,000	4-1-54
2568-2610	43,000	4-1-55
2886-2930	45,000	4-1-56
3296-3350	55,000	4-1-57
3724-3780	57,000	4-1-58
4155-4210	56,000	4-1-59
4585-4640	56,000	4-1-60
5015-5070	56,000	4-1-61
5533-5600	68,000	4-1-62
6074-6140	67,000	4-1-63
6614-6680	67,000	4-1-64
7152-7220	69,000	4-1-65
7692-7760	69,000	4-1-66
8321-8400	80,000	4-1-67
8971-9050	80,000	4-1-68
9621-9700	80,000	4-1-69
10271-10350	80,000	4-1-70
10921-11000	80,000	4-1-71
11571-11650	80,000	4-1-72
12341-12400	60,000	4-1-73

Interest rate: 4 per centum per annum, payable semi-annually October 1 and April 1 in each year, first interest payable October 1, 1938,

being at the date of such signing the duly chosen, qualified and acting officers stated above and authorized to execute said bonds.

I, the undersigned, Sam D. Rose, hereby certify that I am the duly qualified and acting Secretary and Treasurer of the Grand River Dam Authority. I further certify that [fol. 127] I have adopted and do adopt as my signature, the signature of Owen L. Butler as it appears upon the above described bonds as Secretary of said Authority and the facsimile signature of said Owen L. Butler as it appears

upon the interest coupons attached to said bonds as Treasurer of said Authority.

We, the undersigned, Ray McNaughton and Sam D. Rose, further certify that no litigation of any nature is now pending or threatened (either in State or Federal Courts) restraining or enjoining the issuance, sale, execution or delivery of said bonds, or the construction or operation of the Project (PWA Docket No. Okla. 1097-P-DS) to aid in financing the construction of which said bonds were authorized and issued, or the fixing, the charging or the collection of adequate rates or charges to pay the interest on or principal of said bonds, or the costs of operation or maintenance of, or the setting aside of depreciation or other reserves for said project or in any manner questioning the authority or proceedings for the issuance, sale, execution or delivery of said bonds, or affecting the validity of the bonds, or the construction or operation of said project or the fixing, the charging or the collection of said rates or charges in any way; that neither the corporate existence nor the boundaries of said Grand River Dam Authority, nor the title of its present officers to their respective offices, is being contested, and that no proceedings or authority for the issuance, sale, execution or delivery of said bonds have or has been repealed, rescinded or revoked.

There are two injunction suits pending which do remotely affect the construction of minor portions of the Project.

First, an injunction suit in the District Court of Mayes County, Oklahoma, by Willis Thompson against the Authority and its contractor and subcontractor under Contract No. 7 (Construction of Dam and Power House) seeking a permanent injunction enjoining them from trespassing upon certain land owned by him near the West end of the dam, in the performance of certain work (grading and paving about five hundred (500) feet of roadway on his land) called for under Contract No. 7. A temporary injunction was denied by the Court and an answer has been filed making up the issues on the permanent injunction, but the case has not yet been tried. The Authority entered upon this property to do the work called for under Contract No. 7 relying upon an easement in writing executed by Thompson granting this property to the Board of County Commissioners of Mayes County, Oklahoma, for road and park purposes. And also relying upon permission granted by the



Board of County Commissioners to the Authority to enter upon said land and grade and pave the roadway thereon called for under Contract No. 7. In a suit between Willis Thompson and the Board of County Commissioners, to which the Authority was not a party, the Court recently held said easement valid as to the one hundred (100) foot road-way, but cancelled it as to the land granted for park purposes. Appeal has been prayed in that case to the Supreme Court. This litigation is of no consequence in its effect on the construction of the Project for the reason that whatever part of this land the Authority may need can be obtained by purchase or condemnation without materially delaying the construction work under Contract No. 7.

Second, the Authority has instituted a condemnation proceeding in the District Court of Ottawa County, Oklahoma, to condemn 32.5 acres of land belonging to the Victor Heirs as a right-of-way for the relocated tracks of the Frisco Railway Company. The commissioners were appointed and made their award in the sum of Three Thousand Forty Dollars (\$3,040.00). The Victors immediately, and before we could pay the money into court and obtain possession, filed in the condemnation proceeding an application for a temporary injunction to enjoin the Authority from entering into possession of said land on the ground that the Authority did not possess the power to condemn a right-of-way for the Frisco Railway Company, but that the Frisco Railway Company would have to institute and maintain the proceedings in its own name for its own use and benefit. After the application was filed and the restraining order issued the Authority paid the condemnation money into court. Thereafter, upon a hearing on the application for a temporary injunction, the court granted the temporary injunction enjoining the Authority from entering into possession of said property until further order of the court, on the ground that the Authority did not possess the power to condemn for the Frisco Railway Company, to be effective upon the [fol. 128] execution of a bond in the sum of \$25,000.00 properly approved as to its sufficiency by the court clerk. The court gave the defendants two days in which to make the bond, and later extended the time for one more day. The defendants did not make the bond and the temporary injunction did not become effective. Upon the failure of the defendants to make the bond the Authority, through its

contractor, entered upon the property and is now engaged in the construction and relocation of the Frisco Railway tracks thereon.

There is one suit pending in the District Court of Ottawa County, Oklahoma, wherein the Authority is plaintiff and James Robert Audrain and Lura Mae Audrain are the defendants (No. 14,869), for specific performance of an option from the Audrains to the Authority to purchase 69.48 acres of land in the reservoir area, in which the Audrains in their answer alleged the act creating the Authority is unconstitutional, and that the Authority has not the legal capacity to maintain the suit. There is no merit in this contention because the Supreme Court of Oklahoma, in *Sheldon vs. Grand River Dam Authority*, 76 Pac. (2d) 355, held the Act constitutional and the Authority a legal corporate entity..

In connection with certain proceedings in condemnation instituted by the Authority against the Grand Hydro Corporation, the Authority has moved to interplead the State of Oklahoma as a necessary party defendant. This motion will not affect or impair the construction of the Project, because, as we are advised by counsel, such rights, if any, as the State of Oklahoma may possess in the premises are enforceable solely by action to escheat and claim the damages assessed to the landowner for the taking of the property.

There is pending in the District Court of Ottawa County, Oklahoma, a suit for writ of mandamus on behalf of the Board of County Commissioners of Ottawa County against the Authority to compel the Authority to relocate or rebuild three county bridges and raise the approaches to them above the water level of the lake, which is set for hearing on the 23rd day of January, 1940. Inability to arrive at a settlement of the damages arising from the inundation of said bridges is the cause of the institution of this suit and the effect of it, as we are advised by counsel, will only be the determination of the amount of damages that the Authority will have to pay.

There is also pending in the District Court of Ottawa County, Oklahoma, a condemnation suit against a Mr. Angel and Judge William M. Thomas, who holds a mortgage on the land in question to condemn a right-of-way for the relocation of the Ajax Pipe Line, in which application has been made for an injunction against the Authority to enjoin it and its representatives from entering upon the land be-

use the Authority has no power to condemn the right-of-way for another corporation possessing the power of eminent domain. A restraining order has been granted and a hearing on the application for a temporary injunction is set for February 1, 1940. The only effect of this suit, as we are advised by counsel, will be to force the institution of condemnation proceedings by the Ajax Pipe Line Company instead of the Authority if the Court should hold that the Authority has no standing to maintain the action itself.

We Further Certify that the seal which has been impressed upon all of said bonds and upon this certificate is the legally adopted, proper and only official corporate seal. Witness our hands and said corporate seal this 15th day of January, 1940.

Signature  
Ray McNaughton  
Sam D. Rose

Official Title  
Chairman  
Secretary & Treasurer

Expiration of Office  
December 31, 1940  
December 31, 1940

Signatures above guaranteed as those of Ray McNaughton and Sam D. Rose, Chairman of the Board of Directors and Secretary and Treasurer of the Grand River Dam Authority, respectively, and signatures upon each of the above described obligations guaranteed as those of said Ray McNaughton and Owen L. Butler, former Secretary and Treasurer of said Authority.

First National Bank, Miami, Oklahoma, Member Federal Reserve System, by R. J. Tuthill, Vice-President. (Seal.)

fol. 129] Grand River Dam Authority,  
Vinita, Oklahoma

January 16, 1940.

Federal Reserve Bank, Kansas City, Missouri.

GENTLEMEN:

This will be your authority to correct the date inserted in Exhibit "B", signature and no litigation certificate, being a part of Bond Requisition No. 5 for the purchase of \$1,563,000.00 of Grand River Dam Authority 4% Revenue Bonds, from January 12, 1940 to January 15, 1940.

Yours very truly, Grand River Dam Authority, by  
Ray McNaughton, Chairman, Board of Directors.

[Stamp:] Fed. Res. Bank of K. C. 1940, Jan. 17, A. M.,  
17, Ass't Cashiers Office.



[fol. 130]

(Revenue Bonds)

## EXHIBIT C

## Financial Certificate

I, Sam D. Rose, the undersigned Treasurer of the Grand River Dam Authority, hereby certify that there have been no changes in the financial condition of said Grand River Dam Authority, other than those incidental to the ordinary conduct of its affairs, since the date of the last financial statement submitted to the Government as a part of its application for a loan and grant.

I Further Certify that the financial condition of said Grand River Dam Authority is at least as favorable as it was on the date of its application for a loan and grant from the Government.

I Further Certify that there is no default in the payment of principal or interest on any outstanding obligation or indebtedness of said Grand River Dam Authority.

In Witness Whereof, I have hereunto set my hand this 15th day of January, 1940.

Sam D. Rose, Treasurer.

Signature guaranteed as that of the Treasurer of the Grand River Dam Authority.

First National Bank of Miami, Oklahoma, Member Federal Reserve System, by R. J. Tuthill, Vice-President. (Seal.)

[fol. 131]

## GOVERNMENT EXHIBIT 7

Grand River Dam Authority, Vinita, Oklahoma Docket No. Okla. 1697-P-DS

Bond Allotment.....\$11,563,000

Grant Allotment.....8,437,000

Total Allotment.....20,000,000

## Bond Data

## Purchase of Grand River Dam Authority 4% Revenue Bonds

Date of Purchase	Par Value	Accrued Interest Paid	Total Payment
5/23/39	\$ 2,000,000	\$ 11,555.56	\$ 2,011,555.56
7/12/39	2,000,000	22,444.44	2,022,444.44
8/18/39	3,000,000	45,666.67	3,045,666.67
10/18/39	3,000,000	5,666.67	3,005,666.67
1/15/40	1,563,000	18,061.33	1,581,061.33
Totals.....	\$11,563,000	\$103,394.67	\$11,666,394.67

The Public Works Administration has purchased all of the bonds it agreed to purchase from the above Authority in accord with the Offer accepted October 16, 1937, and all of said bonds are now held by the Federal Reserve Bank of Kansas City for the account of this Administration.



## Grant Data

Number of Payment	Date of Payment	Amount
1	1/ 8/38	\$ 65,000.00
2	2/23/38	226,000.00
3	5/11/38	350,000.00
4	9/ 2/38	1,964,000.00
5	4/13/39	207,000.00
6	4/13/39	793,000.00
7	2/15/40	1,082,500.00
8	3/ 8/40	1,875,000.00

Total paid to date ..... \$6,562,500.00

Grant yet to be paid ..... 1,874,500.00

Total Grant Allotment ..... \$8,437,000.00

## Latest Approved Estimate and Purposes for Which Funds Have Been Advanced

	Latest Approved Estimate as of January 11, 1940	Amount Paid Authority and Purposes for Which Funds are to be used
Preliminary Expense .....	\$ 29,619.87	\$ 23,712.54
Land, Right of Way, Easements .....	2,662,385.68	2,662,385.68
Construction .....	15,637,344.53	14,109,135.19
Engineering, etc. ....	830,963.56	695,828.08
Legal, Admin., etc. ....	257,432.88	249,237.73
Interest during Construction....	368,239.16	267,865.33
Miscellaneous .....	214,014.32	117,335.45
	<u>\$20,000,000.00</u>	<u>\$18,125,500.00</u>

March 22, 1940.

[fol. 132] GOVERNMENT EXHIBIT 13a

IN THE DISTRICT COURT OF OTTAWA COUNTY, STATE OF OKLAHOMA

No. 15174

STATE OF OKLAHOMA, ex rel. LEON C. PHILLIPS, Governor of the State of Oklahoma and the State Highway Commission of the State of Oklahoma, Plaintiff,

VS.

GRAND RIVER DAM AUTHORITY: RAY McNAUGHTON, H. EICHENBERGER, Earl Ward, R. P. Colley, and M. Duncan, as members of the Board of Directors of the Grand River Dam Authority; T. P. Clonts, General Manager of the Grand River Dam Authority; W. P. Holway, Chief Engineer of the Grand River Dam Authority; and Massman Construction Company, a corporation, Defendants

Suggestion by the Attorney General of the United States of Lack of Jurisdiction

Now comes Robert H. Jackson, Attorney General of the United States, by Whitfield Y. Mauzy, United States Attor-

ney for the Northern District of Oklahoma, and being advised of the pendency of this action, without submitting the United States of America to the jurisdiction of this Court suggests to the Court as follows:

(1) By Act approved April 26, 1935, as amended, the Legislature of the State of Oklahoma created within the State of Oklahoma a conservation and reclamation district known as "Grand River Dam Authority" referred to in said Act as the "District," and constituted said District a governmental agency and a body politic and corporate, with powers of government and with authority to exercise the rights, privileges and functions as therein specified, including the control, storing, preservation, and distribution of waters of the Grand River and its tributaries for irrigation, power and other useful purposes.

(2) Among the powers conferred upon said District by said Act were the following:

[fol. 133] (h) To overflow and inundate any public lands and public property and to require the relocation of roads and highways in the manner and to the extent necessary to carry out the purposes of this Act; Provided, that said District shall be liable in damages to the State of Oklahoma and/or any subdivision thereof for any injury occasioned or expense incurred by reason thereof.

(i) To construct, extend, improve, maintain, and reconstruct, to cause to be constructed, extended, improved, maintained, and reconstructed, and to use and operate any and all facilities of any kind necessary or convenient to the exercise of such powers, rights, privileges and functions.

(o) To borrow money for its corporate purposes and, without limitation of the generality of the foregoing to borrow money and accept grants from the United States of America, or from any corporation or agency created or designated by the United States of America, and, in connection with any such loan or grant, to enter into such agreements as the United States of America or such corporation or agency may require; and to make and issue its negotiable bonds for moneys borrowed, in the manner and to the extent provided in Section 10. Nothing in this Act shall authorize the issuance of any bonds, notes or other evidences of indebtedness of the District, except as specifically provided in this Act, and no issuance of bonds, notes or other evi-

dences of indebtedness of the District, except as specifically provided in this Act, shall ever be authorized except by an Act by the Legislature.

(3) Section 10 of said Act authorized the District to issue bonds for its corporate purposes not to exceed \$15,000,000 in aggregate principal amount, with interest at not exceeding 6 per cent per annum; and to pledge for the payment of said bonds all or any part of the gross or net revenues thereafter received by the District with respect to the property, real, personal, or mixed, to be constructed with the funds derived from the bonds, or from all or any part of the gross or net revenues thereafter received by the District from whatever sources derived. Said Act granted to the holders of said bonds remedies to enforce the payment thereof and to protect the rights of the bondholders by causing any or all of the following proceedings to be instituted and prosecuted:

(1) By mandamus or other suit, action or proceeding at law or in equity, enforce all rights of the holders of such bonds,

(2) Bring suit upon such bonds and/or the appurtenant coupons,

[fol. 134] (3) By action or suit in equity, require the district to account as if it were the trustee of an express trust for the bondholders,

(4) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds.

(4) Section 10 of said Act further provided that in case of default the holders of more than a majority shall have the absolute right to cause the appointment of a Receiver who may enter and take possession of all or any part of the properties of the District, and operate and maintain said properties for the benefit of the bondholders.

(5) Said Act of April 26, 1935 was further amended by an Act approved May 12, 1939, which amendment authorized the issuance of bonds by the District in an amount not to exceed \$25,000,000 in aggregate principal amount, provided that an amount of such bonds in aggregate sum of \$10,000,000 be authorized to enable the construction of dams at or near Markham Ferry and Fort Gibson, and transmission lines at or near the location sites of said dams as shown in Document



107 of the 1st session of the 76th Congress, and for the purposes of further rural electrification within the District after the completion of the dams. Said amendment continued the provisions relating to the payment of such bonds and remedies of the holders thereof as contained in the Act of April 26, 1935.

(6) Said Act of April 26, 1935 and the amendment thereto were enacted and said authority was created and the work of the said Authority was authorized in view of the authority contained in the Act of Congress of June 16, 1933, and Acts amendatory thereof and supplementary thereto, authorizing the Administrator of Public Works to finance such project by the loan of public funds and with the intention of securing the funds requisite for the carrying out of said project from the Administrator of Public Works under authority of the Act of June 16, 1933, as amended and supplemented and for the purpose of inducing the Administrator to provide such funds.

(7) In pursuance of the authority granted by the foregoing statutory provisions the District issued bonds in the amount of \$11,563,000, all of which bonds were purchased [fol. 135] by the Administrator of Public Works in reliance upon said Acts of the State of Oklahoma and upon the security and remedies for protection and payment of said bonds provided by said Acts. All of such bonds are now held and owned by the United States of America.

(8) Further relying on said Acts and the said remedies and protections the Federal Administrator of Public Works also made a grant to said District in an amount of \$6,562,500 for the purpose of constructing said project.

(9) All said bonds were issued by the Authority pursuant to and secured by a certain indenture by and between Grand River Dam Authority and the First National Bank of Miami, as trustee, dated as of April 1, 1938. By virtue of the terms of said indenture, and as provided by the statutes of the State of Oklahoma hereinabove referred to, such bonds are payable solely from and secured by a first pledge of the revenues of the Flood Control and Hydroelectric Project described in said indenture after payment of reasonable and proper expenses of maintenance and operation.

(10) Section 9 of the Act of April 26, 1935 of the State of Oklahoma provides as follows:



Any and every indebtedness, liability, or obligation of the District, for the payment of money, however entered into or incurred, and whether arising from contract, implied contract, or otherwise, shall be payable solely (1) out of the revenues received by the District in respect of its properties, subject to any prior lien thereon conferred by any resolution or resolutions theretofore adopted as in this Act provided, authorizing the issuance of bonds or (2), if the Board shall so determine, out of the proceeds of sale by the District of bonds payable solely from such revenues.

(11) Prior to the incurring of any indebtedness, liability, or obligation of the Authority to the State of Oklahoma, or any subdivision thereof, for any injury occasioned, or expenses incurred, by reason of the overflowing and inundation of any public lands or public property or the requiring of the relocation of roads and highways, the Authority by appropriate resolutions and by the terms of said indenture conferred a prior lien on all of the revenues received by the [fol. 136] Authority in respect of its properties as security for the payment of said bonds owned by the United States. By reason of said Section 9 and by reason of the conferring of such prior lien, the right, if any, of the State of Oklahoma, or its subdivisions, to payment of any damages by the Authority by reason of such overflowing, inundation or requiring relocations is wholly junior and subordinate to the interest of the United States as the holder and owner of such bonds.

(12) The proceeds of the aforesaid bonds and said grant have been used in the construction of the project covered by the indenture referred to above. Said project is about to be completed. The aforesaid Authority is about to close said dam and inundate the lands lying in back of said dam, which lands will comprise the reservoir area.

(13) The sole source of and security for payment of the obligations due by the Authority to the United States is from the revenues to be derived from the operation of the project of which the dam is an integrated and essential part. Under the terms of the indenture and of the Acts of Oklahoma, the United States is entitled to cause the appointment of a Receiver in the event of default in fulfilling the obligations of the indenture, which obligations require the completion of the dam and closing of the dam by March

30, 1940. Pursuant to these provisions entitling the United States to cause a Receiver to be appointed who may enter upon and take possession of the project and operate the same for the benefit of the bondholders, the dam and project are constituted as the ultimate security for repayment to the United States of the principal and interest of the loan secured by the bonds. The United States has a property interest in the revenues of said project, in the operations thereof, and in the project and the dam itself.

(14) As above alleged, such property rights of the United States are prior, superior, and senior to any rights or claim of interest on the part of the State of Oklahoma in or to the project, any revenues from said project or any property or funds owned or controlled by the Authority, and prior, superior, and senior to the claim of the State of Oklahoma in any subdivision thereof because of any alleged indebtedness, liability or obligation of the Authority. By reason of the foregoing, any indebtedness, liability, or obligation of the Authority to the State of Oklahoma or any subdivision thereof may be enforced, satisfied or collected only in strict subordination to the foregoing property interest of the United States.

(15) In addition to the above stated property rights of the United States in and to said project and dam, the operation thereof and the revenues therefrom, the United States, pursuant to a contract entered into between the Authority and the Public Works Administrator have certain contract rights to the completion of the dam by March 30, 1940.

(a) In contemplation of the carrying out of the above mentioned project, the Authority sought from the Federal Power Commission a license to operate a dam, generating plants, and other equipment for the production of electricity at the site of said project. The Federal Power Commission granted said license on certain specified conditions. Pursuant to said conditions the Authority covenanted among other things that it would construct and maintain the dam at a height of 755 feet. Pursuant to said covenants the United States has a contract right to the construction and the maintenance of said dam at 755 feet.

(b) The Authority is further contractually obligated to the United States by virtue of the "loan agreement" entered into between the Authority and the United States, ac-

ing through the Federal Administrator of Public Works. The said agreement was created by the acceptance by the Authority of the offer dated October 16, 1937, from the United States of America and the amendments thereof and supplements thereto. Under the terms of said agreement the Authority covenanted with the United States to construct and complete said project and close said dam on or before March 30, 1940. By reason of the foregoing, the United States has a valuable property right in said agreement and in the performance thereof and by reason of the specific enforceability of said agreement the United States has a valuable property interest in said project and said dam and the operation thereof.

[fol. 138] (16) The restraining order granted in the instant suit and the injunction prayed for therein will result in forestalling and preventing the completion of the project and the closing of the dam. They will further forestall and prevent the construction of the dam to a height in excess of 700 feet. If the restraining order is carried out or an injunction as prayed is granted and carried out, the consequence will be that the source of payment of the obligations due the United States and the security for the bonds of the United States will be seriously impaired or destroyed. The rights and property interests of the United States under (a) the Acts of the State of Oklahoma, (b) the bonds, (c) the trust indenture, (d) the loan agreement, (e) the license from the Federal Power Commission, will be impaired or destroyed by any relief that could be granted on the petition herein and particularly by the relief prayed and by the restraining order already granted.

(17) The substantiality and gravity of the impairment and destruction of such rights and property interests of the United States is shown by the following: It is absolutely necessary for the Authority to complete said dam and commence the flooding of the areas included in the project immediately, before the expected onset of the spring floods in April, 1940. Unless said dam can promptly be closed, the normal spring floods on the Grand River will endanger, and may seriously damage or destroy said dam. Furthermore, unless said dam can promptly be closed and the areas flooded, it will probably be impossible to impound sufficient waters absolutely necessary for the power operations of the Authority for the coming year, and there will be no rev-



venues available for payment of principal or interest on said bonds.

(18) The relief sought and the only relief which can be granted on the petition in the present proceedings will be directed toward and against the property interests of the United States and is likely to destroy, damage, or seriously impair such interests. A proceeding directed against the property rights or interests of the United States is in effect a suit against the United States. The present proceedings constitute a suit against the United States. Under the Constitution of the United States, the United States and its property are immune from suit except with the consent of Congress. Under the Constitution of the United States the present suit which is in effect against the United States and [fol. 139] its property and which will result in the impairment and destruction of the property of the United States is beyond the jurisdiction of this Court, not having been authorized by Congress.

It is therefore suggested that this Court is without jurisdiction of the instant proceedings and that said proceedings should be dismissed for want of jurisdiction.

(Signed) Robert H. Jackson, Attorney General of the United States; Francis M. Shea, Assistant Attorney General of the United States; Whitfield Y. Mauzy, United States Attorney for the Northern District of Oklahoma; Sidney J. Kaplan, Special Assistant to the Attorney General of the United States; Frederick Bernays Wiener, Special Assistant to the Attorney General of the United States.

[fol. 140]

#### VERIFICATION

DISTRICT OF COLUMBIA, SS:

John M. Carmody, being duly sworn, deposes and says:

I am Federal Works Administrator of the United States, and as such have supervision over the Public Works Administration, which is a constituent part of the Federal Works Agency, and the successor to the former Federal Emergency Administration of Public Works.

I have read the foregoing suggestion and know the contents thereof. The facts therein stated I know to be true.



of my own personal or official knowledge, except as to matters stated on information and belief, and as to those matters I verily believe them to be true.

(Signed) John M. Carmody.

Subscribed and sworn to before me, this 18th day of March, 1940. (Signed) Mary Satterfield, Notary Public in and for the District of Columbia. My commission expires 12-14-44. (Seal.)

[fol. 141]

VERIFICATION

DISTRICT OF COLUMBIA, ss:

E. W. Clark, being duly sworn, deposes and says:

I am Acting Commissioner of the Public Works Administration, which is a constituent part of the Federal Works Agency, and the successor to the former Federal Emergency Administration of Public Works.

I have read the foregoing suggestion and know the contents thereof. The facts therein stated I know to be true of my own personal or official knowledge, except as to matters stated on information and belief, and as to those matters I verily believe them to be true.

(Signed) E. W. Clark.

Subscribed and sworn to before me, this 18th day of March, 1940. (Signed) Mary Satterfield, Notary Public in and for the District of Columbia. My Commission expires 12/14/44. (Seal.)

STATE OF OKLAHOMA,  
Ottawa County, ss:

I, Henry Austin, Court Clerk, do hereby certify that I have compared the foregoing copy of a Suggestion by the Attorney General of U. S. of Lack of Jurisdiction, Case No. 15174, with the original now remaining on file in this office, and that the same is a full, true and exact copy thereof.

In witness whereof I have hereunto seal my hand and affixed my official seal this 22nd day of March, 1940.

Henry Austin, Court Clerk, by — — —, Deputy.  
(Seal.)

February 23, 1940.

Mr. Ray McNaughton, Chairman, Grand River Dam Authority, Miami, Oklahoma.

MY DEAR MR. McNAUGHTON:

Since the visit of your Board to my office Tuesday, I have read Governor Phillips' letter and his enclosures, which reached my desk just before you arrived, but which I had not had an opportunity to read. I have also reviewed in my mind the matters we discussed with respect to what you think will be the Authority's needs for additional funds. For your information the Governor attached to his letter copy of a letter the Highway Commission sent to him under date of February 14, 1940, and copy of a letter the same Commission addressed to Chairman McNaughton, c/o Rogers Smith Hotel, Washington, D. C., November 8, 1939.

I take it from our conversation and from my conversation with the Governor as well as from correspondence that I have been seeing recently, that the question of how roads in the inundated area should be paid for is in dispute. It is my understanding that the Authority made an agreement with the State Highway Commission by which the Authority would build a certain bridge in lieu of satisfaction of all claims for highways to be flooded. It is my understanding that this bridge has been built.

Both of the letters referred to above, copies of which Governor Phillips sent me with his letter and map, ignore that agreement. It is my understanding also that the fact of this agreement is being questioned by the Governor and his new State Highway Commission, in spite of the fact that the men who made it have made affidavits and are prepared otherwise to testify to their participation in the agreement. It is my understanding further that if this agreement is to be abandoned and the demands of the Governor and the present State Highway Commission are to be met, the Authority will be required to spend an additional 840 odd thousand dollars. Seriously, I do not know where you can expect to secure any such sum.

The Grand River Dam Authority, like the State Highway Commission, is a creature of the State of Oklahoma. It is true that the Grand River Dam and its facilities are being

financed wholly by the Federal Government, but the property [fol. 143] belongs to the State. It is true also that if it is necessary for the Authority to borrow any such additional sum as has been suggested, your bonds, which we have purchased, will be greatly weakened.

There are still on the Board some of the men who made the original agreement. I take it they knew what they were doing. I take it that they had the interest of Oklahoma at heart. I take it that if agreement on the issues cannot be reached you will make whatever arrangements are necessary to have the matter decided by the courts. I think it ought to be made clear here that so far as I have been able to learn, the project originated in Oklahoma and was aggressively urged by Oklahomans right up to the minute the allotment was made. The benefits that flow from this project will inure to Oklahoma and her citizens. The Federal Government is concerned, of course, to see that the capital structure is not overloaded.

You say the need is urgent because failure to close the dam before spring may not only cause a year's delay in generating power, but cause irreparable physical and financial damage. We shall be glad to help you in any way we can. You wanted a new general manager. I approved this request. You wanted an Oklahoman as general manager. I approved your choice. I cite this merely to indicate that to the degree I possess authority or responsibility in our relationship I want to go as far as a public official may go prudently to make your burdens of management light. I find no warrant in the record for repudiating the original agreement or for giving away or promising to give away Federal funds intrusted to me as Administrator. It seems to me in view of your previous agreement you should move promptly either to get the Governor and his Highway Commission to ratify the agreement you relied on, or ask the courts for relief.

Sincerely, John M. Carmody, Administrator.

cc: Governor Leon C. Phillips; Mr. R. P. Colley, Tulsa, Oklahoma; Mr. M. Duncan, Muskogee, Oklahoma; Mr. Earl Ward, Pryor, Oklahoma; Mr. H. Eichenberger, Okmulgee, Oklahoma; Mr. R. L. Davidson, Vinita, Oklahoma; Mr. Alan Johnstone; Colonel E. W. Clark; Dr. Clark Foreman.

cc: Alan Johnstone, Colonel Clark, Clark Foreman, Members of Grand River Dam Authority, General Counsel for Grand River Dam Authority.

February 23, 1940.

Honorable Leon C. Phillips, Governor of the State of Oklahoma, Oklahoma City, Oklahoma.

MY DEAR GOVERNOR PHILLIPS:

I want to thank you for sending me the excellent map and copies of letters which you attached to it. These arrived just a few minutes before the Authority Board came to my office in a body. It was only after they left that I was able to go over all of the material in detail.

"From my conversation with you and with them and my reading of your data and other correspondence in the file, the issue seems simple and clear. Was there an agreement or not with respect to the roads in question? In the last paragraph of my letter to Chairman McNaughton, copy of which is attached, I have suggested what seems to me to be the next and immediately essential move of the Authority.

I make this suggestion in all kindness and with appreciation of our various public responsibilities as well as with the hope that such a course will cause neither undue delay nor undue hardship to anyone."

Thank you again for your visit during which you stated your position concisely, and for the excellent map.

Sincerely, John M. Carmody, Administrator.

Enclosure.





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# GRAND RIVER DAM AUTHORITY

VINITA, OKLAHOMA

Miami, Oklahoma  
February 26, 1940

Mr. John M. Carmody,  
Administrator,  
Federal Works Agency,  
Washington, D. C.

My dear Mr. Carmody:

Your air-mail letter of February 23, relative to the highway situation as it affects Grand River Dam Authority, was received at my office this morning. Your letter will be considered by the board of directors of the Authority at its meeting February 24, 1940.

We sincerely appreciate the consideration you have given this and other matters pertaining to this project.

Yours very truly,

*Sam D. Rose*  
Chairman

RM:OL

cc: Mr. T. P. Clonts, General Manager, GRDA.  
Mr. Sam D. Rose, Secretary, GRDA.



STATE OF OKLAHOMA  
EXECUTIVE CHAMBER  
OKLAHOMA CITY

LEON C. PHILLIPS  
GOVERNOR

March 1, 1940

Mr. John M. Carmody  
Administrator  
Federal Works Agency  
Washington, D.C.

Dear Mr. Carmody:

This will acknowledge your letter of February 23, together with copy of your letter to Mr. McNaughton.  
• I thank you for the information and suggestions.

With best wishes, I am

Yours very truly

*Leon C. Phillips*  
LEON C. PHILLIPS,  
Governor of Oklahoma

LCF: b'l



Okla. 1077  
@

RESOLUTION OF THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY RELATIVE TO THE CONTROVERSY BETWEEN THE HIGHWAY COMMISSION OF THE STATE OF OKLAHOMA AND THE GRAND RIVER DAM AUTHORITY OVER THE LIABILITY OF THE AUTHORITY FOR INUNDATING STATE ROADS AND BRIDGES IN THE BASIN AREA.

encl 2/2/40

WHEREAS, the Grand River Dam Authority has constructed the Grove Bridge under and in accordance with an oral understanding and agreement with the former Highway Commission of the State of Oklahoma that the construction of said bridge would be in full liquidation and satisfaction of any and all liability of the Authority for the inundation of State roads and bridges in the basin area of the Grand River Dam Lake; and

WHEREAS, the present Highway Commission of the State of Oklahoma refuses to be bound by or to carry out said oral agreement with the former Highway Commission and is insisting upon the Authority paying the additional sum of \$641,000.00 in settlement of said damages; and

WHEREAS, it has been suggested by the Administrator of the Federal Works Agency that this controversy be settled finally in the courts; and

WHEREAS, the State Highway Commission has indicated a willingness to submit said controversy to litigation in the proper court or courts and be bound by a final adjudication therein, provided the Administrator of the Federal Works Agency gives satisfactory assurance that sufficient funds will be made available and applied by the Government to liquidate any such judgment recovered against the Authority; and

WHEREAS, the construction of the Project is seriously threatened because of the said controversy;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GRAND RIVER DAM AUTHORITY that the Administrator of the Federal Works Agency be and he is hereby requested to give satisfactory assurance that if the State of Oklahoma, acting by and through its Highway Commission, agrees to litigate in the proper court or courts the liability of the Authority for the inundation of State roads and bridges in the basin area of the Grand River Dam Lake and abide by the final result thereof, the Administrator of the Federal Works Agency will make available and consent to the application of sufficient funds to liquidate any such final judgment, either by payment of the amount of such judgment



by the Authority of relocated roads and bridges to replace those damaged, and

BE IT FURTHER RESOLVED BY THE BOARD OF DIRECTORS OF THE AUTHORITY  
in the event such assurance is given, the Administrator of the Federal Works  
Agency be and he is hereby requested to make such funds available and consent  
to such application thereof.

CERTIFICATE

STATE OF OKLAHOMA )  
COUNTY OF CRAIG } ss.

I, Sam D. Rose, Secretary of the Grand River Dam Authority, a conserva-  
tion and reclamation district, and a public corporation organized and existing  
under the Laws of the State of Oklahoma, do hereby certify that the foregoing  
is a true and correct copy of a resolution adopted by the Board of Directors  
of the Grand River Dam Authority at a regular meeting thereof held in Vinita,  
Oklahoma, on the 4th day of March, 1940, at which meeting a quorum of the Board  
was at all times present and acting.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the cor-  
porate seal this 4 day of March, 1940.

Sam D. Rose  
Secretary

Tightly Bound

FEDERAL WORKS AGENCY

WASHINGTON

cc: Public Works Administration (with inclosure)

OFFICE OF THE ADMINISTRATOR

March 7, 1940

Mr. T. P. Glatts  
General Manager  
Grand River Dam Authority  
Vinita, Oklahoma

My dear Mr. Glatts:

I have your letter, to which you attach some resolutions passed by the Board with respect to the road controversy. I thought I made my position clear in my recent letter to the Board. I have no desire to anticipate or in any way to prejudice the decision of any appropriate court before whom this controversy is litigated. I think the Board has an obligation to go ahead with its business promptly. Part of that business appears to be the need for the earliest possible determination with respect to the facts of the agreement that has already been discussed too much in this kind of scattered fashion.

Sincerely,

(Sgd.) John M. Carnody

John M. Carnody  
Administrator

*copy to [unclear]*  
1 MAR 8 1940

RECEIVED  
MAR 8 1940

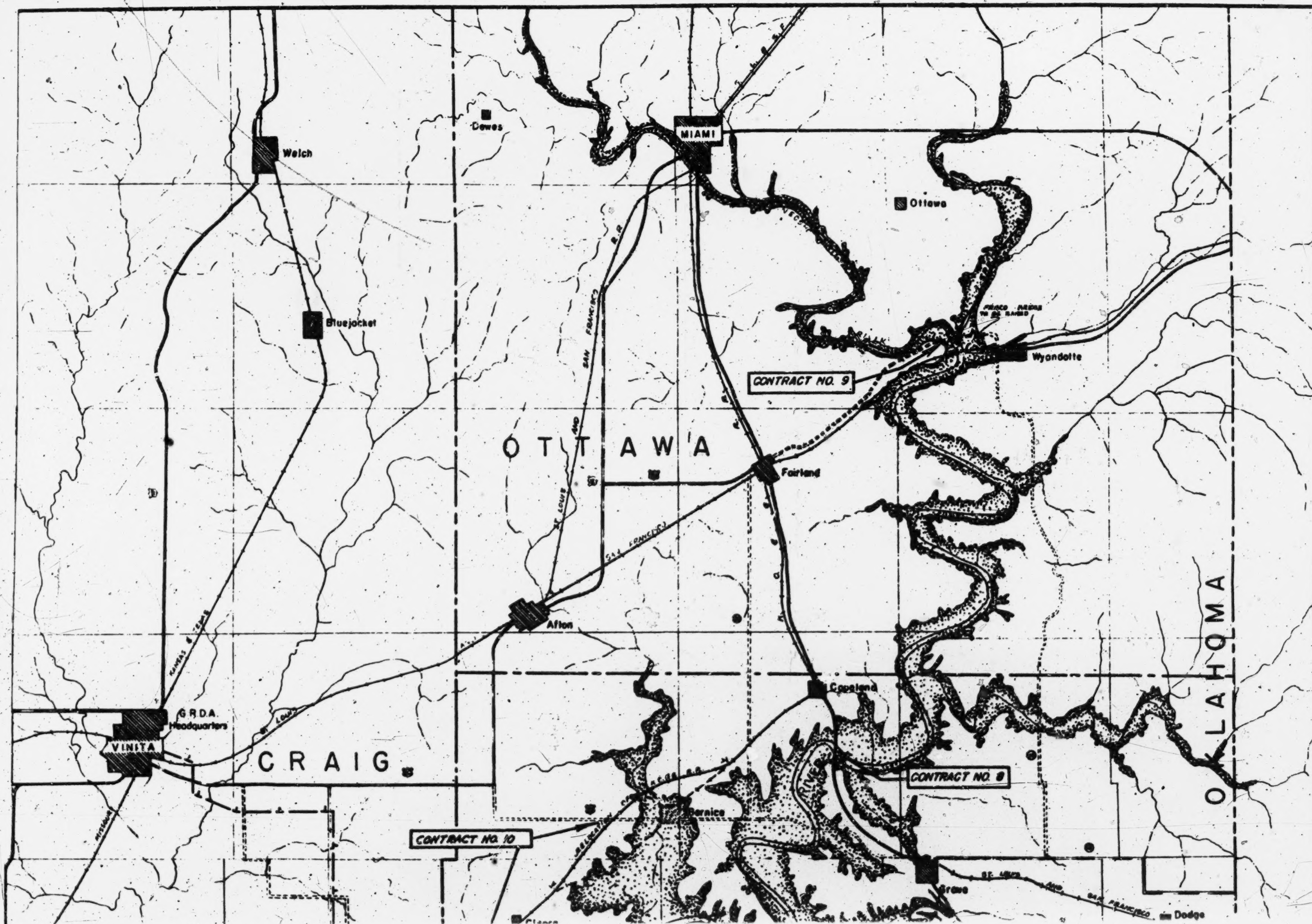
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MAR 8 1940  
*[Signature]*  
Acting Commissioner

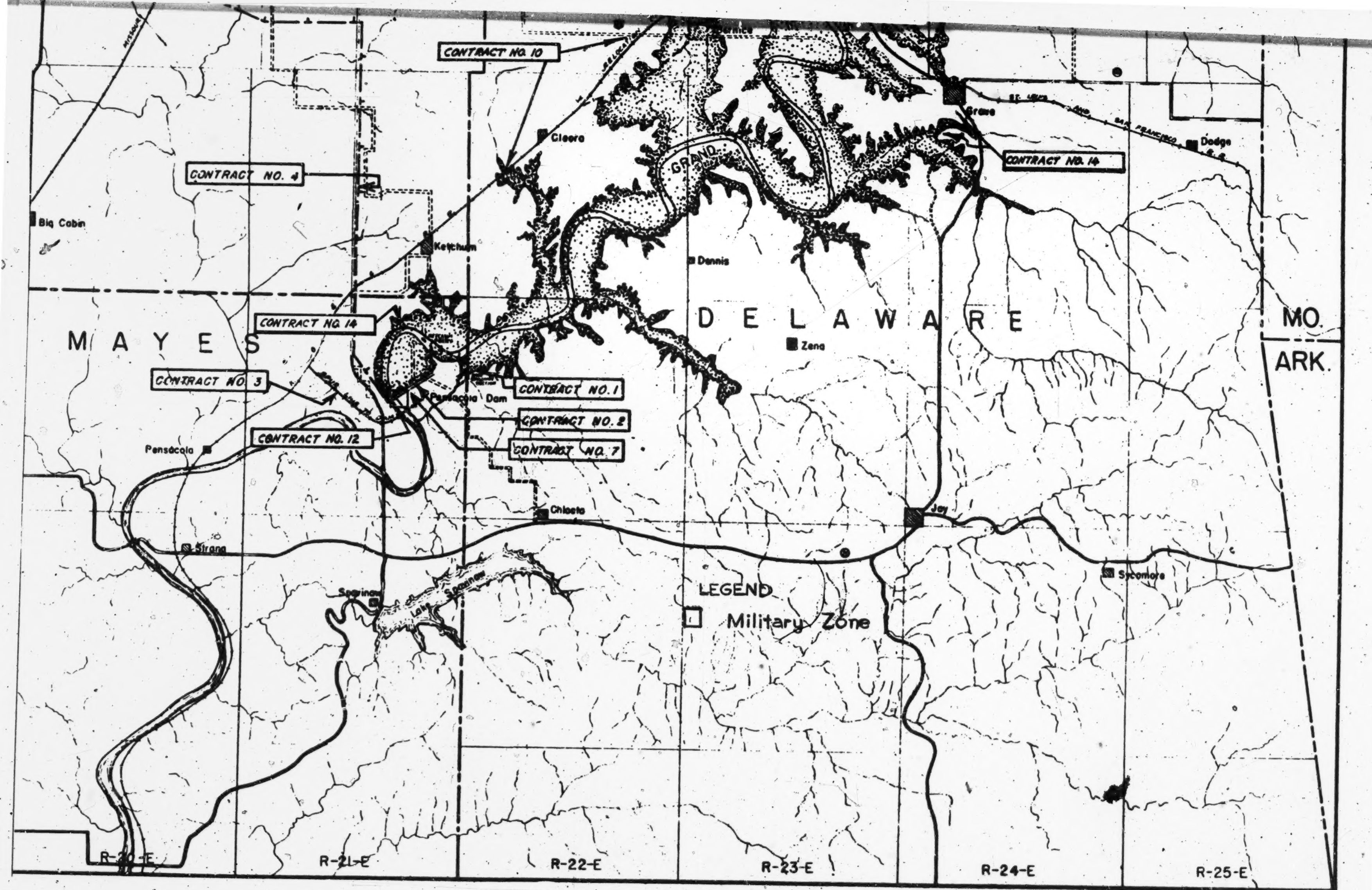
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[fol. 151]

## GOVERNMENT EXHIBIT 11

The Adjutant General is directed to place in effect the Executive Order declaring martial law at the Grand River Dam, if it is found necessary so to do to protect and prevent damage to the property of the State of Oklahoma, including roads and bridges, but in no case will he use unnecessary force to interfere with any public operations or the construction of the dam, and will in his discretion cause to be executed the order declaring martial law only to the extent that it may be necessary to protect public property of the State and to prevent its destruction or damage.

[fol. 152]

## GOVERNMENT EXHIBIT 11a

Headquarters

Oklahoma National Guard

Office of the Adjutant General

Oklahoma City, March 15, 1940.

Special Orders.

No. 40.

## Extract

3. The officers and enlisted men placed on duty by Special Order No. 39, these headquarters, March 13, 1940, are relieved from active duty, effective this date, with the exception of Major Harry B. Parris, Captain Benjamin Bliss, and Second Lieutenant Lem W. Shields, and will return to their home stations and revert to their former status.

Major Parris, Captain Bliss, and Lieutenant Shields will remain on duty at the Grand River Dam as military observers until relieved by proper authority.

By Order of the Governor:

Louis A. Ledbetter, Brigadier General, The Adjutant General.

[fol. 153]

## GOVERNMENT EXHIBIT 11b

## Headquarters

Oklahoma National Guard

Office of the Adjutant General

Oklahoma City, March 13, 1940.

Special Orders.  
No. 39.

1. Pursuant to executive order of the Governor dated March 13, 1940, declaring martial law in the area occupied by the Grand River Dam in Mayes County, Oklahoma, the following officers and units of the Oklahoma National Guard are placed on active duty, effective this date, and directed to proceed from their respective home stations to the vicinity of the Grand River Dam in Mayes County, Oklahoma, for the purpose of enforcing said executive order and establishing martial law:

Col. Philip S. Donnell, 179th Infantry, Stillwater.  
Maj. Harry B. Parris, 180th Infantry, Eufaula.  
Det., Serv. Co., 180th Inf., Tulsa.  
Company M, 180th Infantry, Tahlequah.

The officers and enlisted men placed on duty by this order will perform such duties and carry out such orders as they may receive from the Governor or the Adjutant General and will remain on duty until relieved by proper authority.

The duty to be performed, the travel enjoined and the expense entailed are necessary in the military service of the state.

By Order of the Governor:

Louis A. Ledbetter, Brigadier General, The Adjutant General.

Official. Ross H. Routh, Major, A. G. D., Executive Officer.

[fol. 154]

## GOVERNMENT EXHIBIT 11d

## Headquarters

## Oklahoma National Guard

## Office of the Adjutant General

Oklahoma City, March 21, 1940.

## Special Orders.

No. 41.

1. First Lieutenant William E. Harrison, Infantry, Headquarters Detachment, Special Troops, Oklahoma City, and First Lieutenant Oran N. McCain, Headquarters Battery, 160th Field Artillery, Tulsa, are placed on active duty, effective this date, and directed to proceed from their respective home stations to the Grand River Dam, Disney, Oklahoma, for the purpose of acting as military observers at the Grand River Dam and performing such other duties as the Governor or the Adjutant General may direct.

Lieutenants Harrison and McCain will relieve Major Harry B. Parris, Headquarters, 180th Infantry, and Captain Benjamin Bliss, Company M, 180th Infantry, placed on active duty by Special Order No. 39, these headquarters, dated March 13, 1940, who are relieved from active duty, effective this date, and will return to their home stations.

Lieutenants Harrison and McCain will remain on duty until relieved by the Adjutant General.

The duty to be performed, the travel enjoined and the expense entailed are necessary in the military service of the state.

By Order of the Governor:

Louis A. Ledbetter, Brigadier General, The Adjutant General.

Official. Ross H. Routh, Major, A. G. D., Executive Officer.



[fol. 155]

## GOVERNMENT EXHIBIT 12

## Western Union

CY 5 43-Oklahoma City Okla Mar 13 1940 600P  
Major Harry B Parris-  
Wagoner Okla-

Special orders number 39 ACO March 13th 1940. Following officers and men on active duty enforcing Marshall Lass in Mays County as per executive order Governor, Colonel Phillip S Donnell Major Harry B Parris Detachment Service Company 180th Infantry Company M 180th Infantry-  
Ledbetter A-jutant General. (31).

[fol. 156]

## GOVERNMENT EXHIBIT 12b

Diary of Maj. Harry B. Parris, In Re G. R. D. A.

Wednesday, Mar. 13, 1940.

2:30 A. M. Received call from Maj. Routh, Ex Of to the Adjutant Gen. directing me to meet troops in Wagoner between 6:00 and 7:00 A. M. Mar. 13.

5:10 A. M. Left home station in company with Lt. Shields, Co. H, 180 Inf.

6:30 A. M. Arrived at Wagoner, reported at Sheriff's office. No troops.

8:10 A. M. Sent wire to A. G. O. advising arrival and non-arrival of troops.

9:20 A. M. Tele. Comm. with A. G. O. advising me that troops had just left Tahlequah and directing that troops be held in armory until further orders.

10:05 A. M. Troops arrived, equipment checked. Authorized Capt. Bliss to procure equipment listed on memo sheet from Capt. Jones.

5:17 P. M. Rec'd call from A. G. O. advising that proclamation of Gov. had been issued and requesting my plan for carrying out order; the following plan outlined and approved: that I, in company with Capt. Bliss and Lt. Shields proceed by private transportation to Langley and dam site to ascertain situation: that troops be held for the [fol. 157] night at armory at Wagoner under command Lt. Gore: troops to be fed breakfast at Wagoner Mar. 14 and

unless otherwise directed by competent authority to leave Wagoner at 6:00 A. M. Mar. 14 and proceed to dam site. Capt. Jones and Lt. Reed requested to assist in arrangements for feeding breakfast: all troops to be held in armory and not permitted to roam about. Plan approved by A. G. O.

6:50 P. M. Rec'd telegram A. G. O. and immediately left for dam—via Vinita—considerable trouble—lost—arrived at dam about 9:00 P. M. Met Supt. of Construction Towne. Meeting very agreeable—advised him of my instructions—he inquired as to extent of work as I was instructed to stop—advised him that I did not understand that my instructions required me to interfere with any work that did not obstruct flow of Grand River—he advised that concrete work on Arch No. 6 had been poured to height of 30 ft.—that further concrete could not be poured until expiration of 60 hours; that the work now being done was simply finishing or polishing and that the flow of water would not be interfered with: I advised him that if this was correct I would make no [fol. 158] attempt to stop this work pending further instructions and advice. ^

9:15 A. M. Made inspection of dam in connection with Supt.—observed that water was flowing in channel—advised Supt. that it was not the intention of Gov. Phillips to interfere with any work that did not prejudice the rights of the State as outlined by him and that Gov. did not desire to force unemployment upon men unless necessary to protect rights of State.

9:30 P. M. Placed call for A. G. O. at Wagoner and Gov. Phillips.

10:10 P. M. Reported to Gov. Phillips.

10:25 P. M. Talked to Capt. Jones at Wagoner in lieu of A. G. O.—directed him to advise A. G. of my actions and that I could be called at phone 14 Disney.

### Mar. 14

12:45 A. M. Left for inspection of dam.

2:10 A. M. Returned from inspection—water still flows—no work being done on #6 on this shift.

2:30 A. M. Bed—Bunk house #1.

[fol. 159] 8:30 A. M. A. G. and Col. Cox arrived.

9:13 A. M. Truck convoy and troops under command of Lt. Gore arrived and reported; troops did not detruck and at 9:40 were directed to return to home station.

11:00 A. M. Supply truck arrived during my absence and found them on my return from engineer's office at Langley. Instructed them to return to Okla. City with supplies immediately after dinner.

11:15 to 12:10 Visited dam in conjunction with Col. Cox, the dam still grows and the water still flows.

[fol. 160]

Mar. 14, 1940

5:30 P. M. Advised Mr. Towne that no work was to be stopped or any change made in their plans except upon written order and in absence of such written order, work is to proceed according to their plans. Mr. Towne advises that their present plan does not contemplate the closing of the six holes in arches 7 and 8 before the expiration of ten days or two weeks.

7:30 P. M. to 8:30 P. M. Visited dam with Mr. Davis—Dam still grows—Water still flows.

Mar. 15, 1940

8:30 to 10:00 A. M. Visited dam—ditto.

10:47 A. M. Talked to A. G. O.—advised to wait until afternoon for instructions.

1:40 P. M. Visited dam—ditto.

7:00 P. M. Talked to A. G. O.

8:18 P. M. Dam—

Mar. 16, 1940

7:30 to 9:00 A. M. Visited dam.

11:30 A. M. Directed Capt. Bliss to report to A. G. O.

[fol. 161] 4:30 P. M. Reported to A. G. O.

6:30 P. M. Went to Claremore after station wagon.

10:30 P. M. Returned with station wagon.

Mar. 17, 1940

8:30 A. M. Visited dam.

11:15 A. M. Talked to A. G. O.—instructed to relieve Capt. Bliss and Lt. Shields if they desire to be relieved.

12:30 P. M. Lt. Shields relieved.

1:30 P. M. Lt. Shields left for home station.

4:00 P. M. Visited dam.

Mar. 18, 1940

8:00 A. M. Visited dam—paid board.

9:00 A. M. To Vinita.

2:00 P. M. Visited dam.  
 5:30 P. M. Visited dam.  
 Talked to Gov. at 1:30 P. M.

Mar. 19, 1940

9:00 A. M. to 1:00 P. M. Visited dam.  
 4:00 P. M. Visited dam.  
 8:30 P. M. Visited dam.

Wednesday, Mar. 20, 1940

7:30 A. M. Visited dam.  
 8:20 A. M. Vinita.  
 10:00 A. M. Left for Miami.

[fol. 162]

Mar. 20, 1940

12:15 P. M. Returned to dam.  
 1:30 P. M. Talked to A. G. O.—directed to call back at  
 4 P. M.  
 3:00 P. M. Visited dam.  
 4:00 P. M. Talked to A. G. O.—promised relief Thursday.  
 7:00 P. M. Visited dam.

Mar. 21, 1940—Thursday

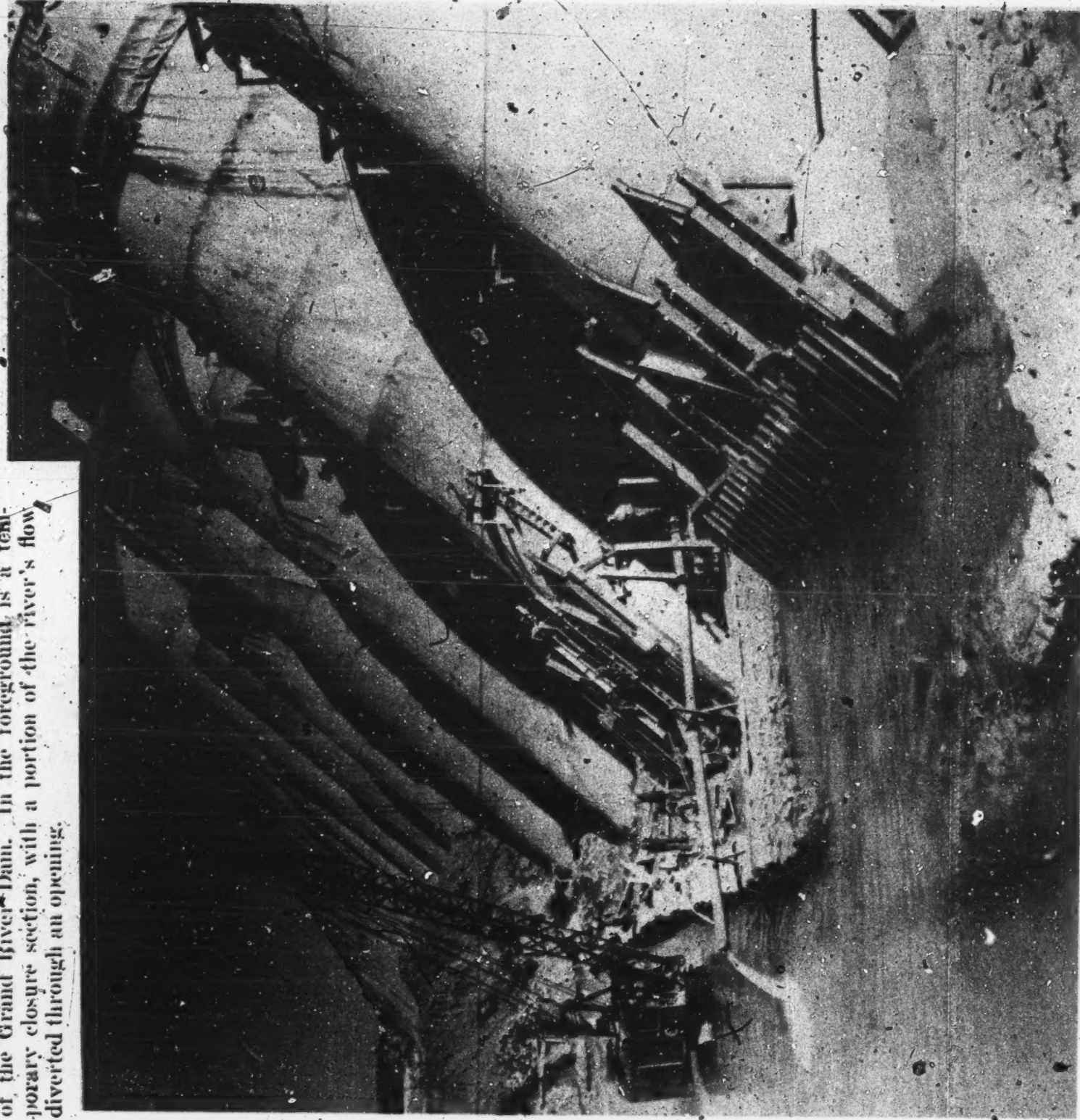
8:00 A. M. to 9:10 A. M. Visited dam—Dam still grows—  
 Water still flows.  
 11:30 A. M. Talked to A. G. O. Advised that Capt.  
 McKain and Harrison were on way to relieve and advised  
 not to await their arrival.  
 All bills paid.  
 12:30. Capt. Bliss and myself leave for home station.  
 4 P. M. Arrived home.



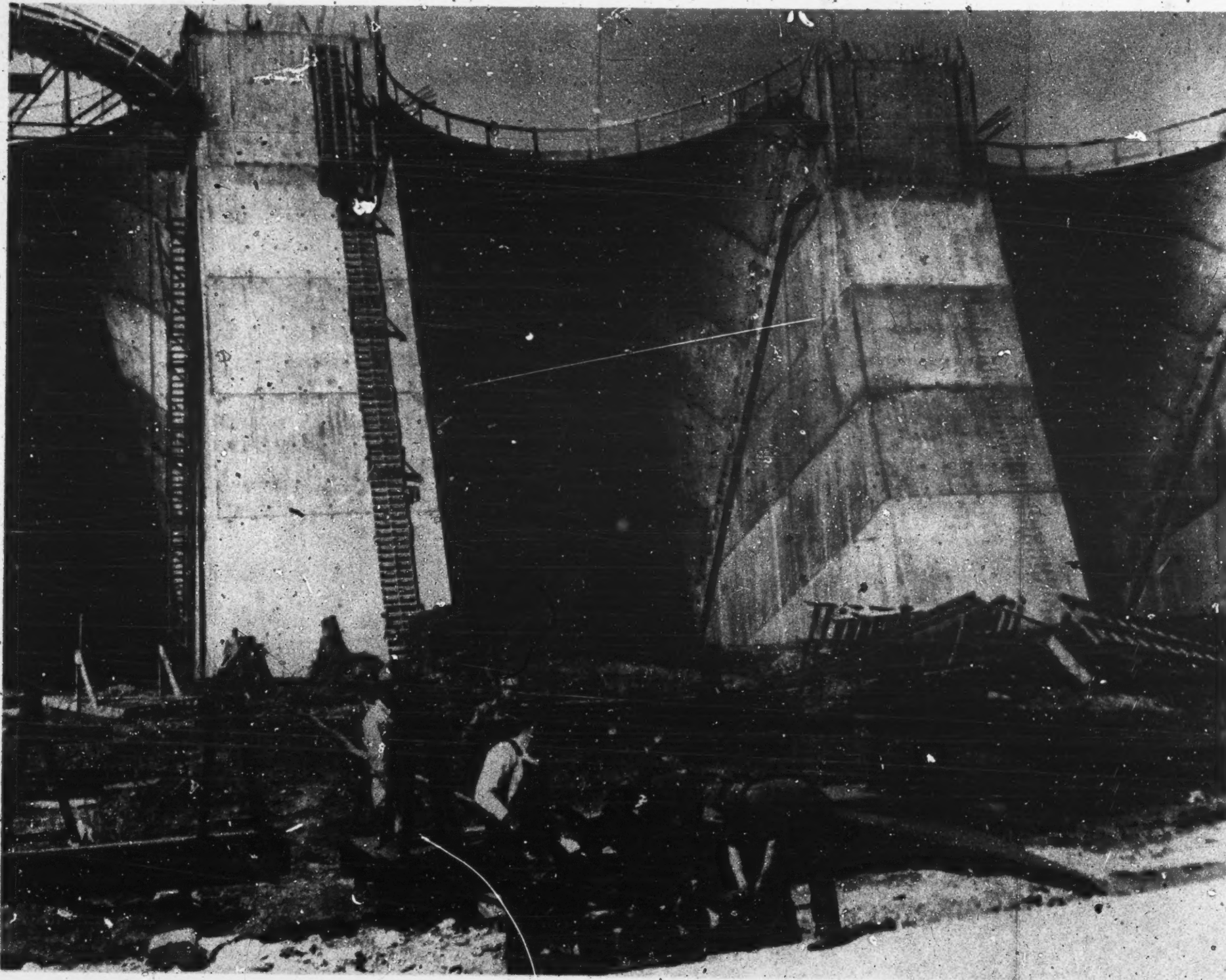
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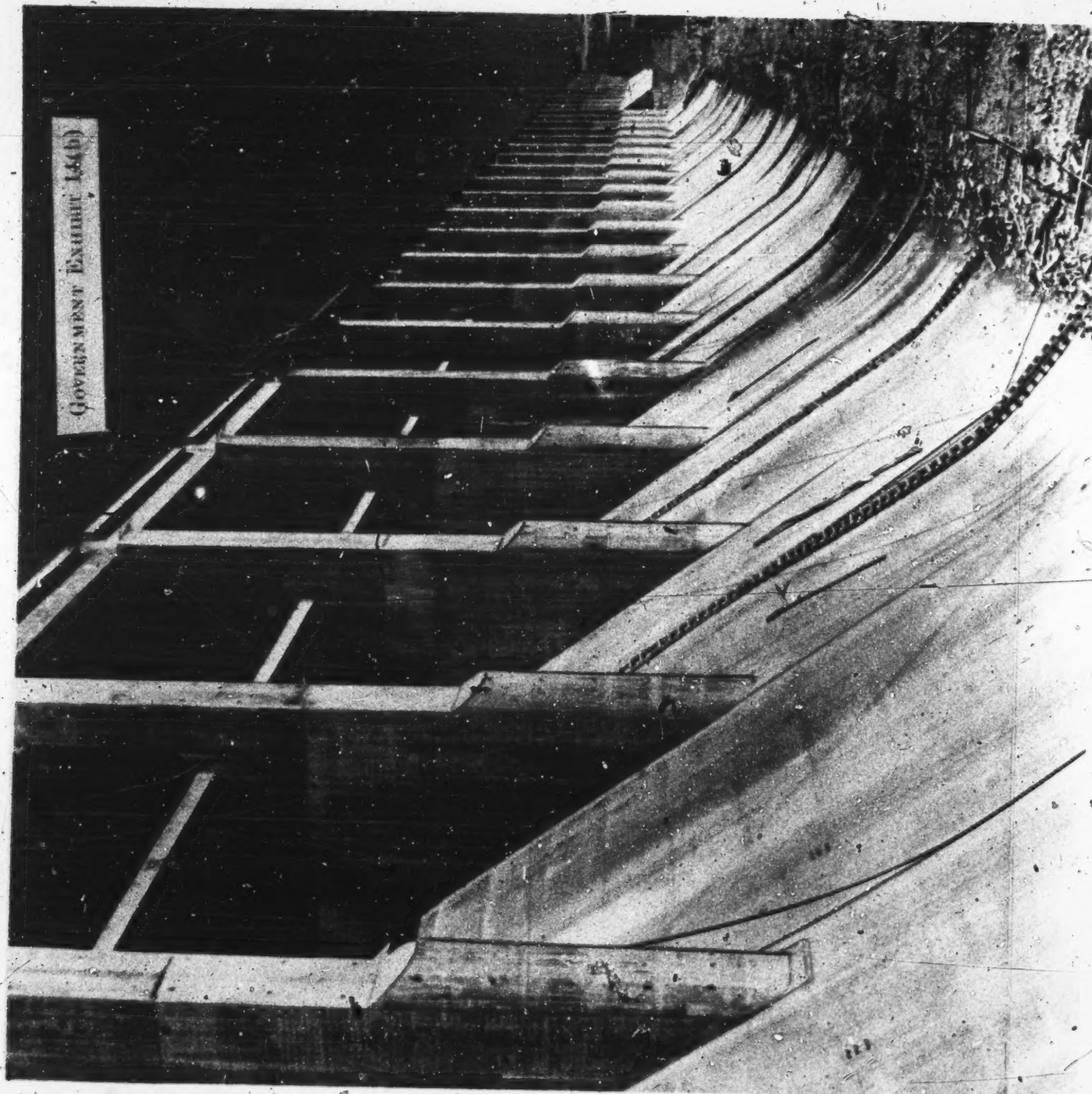
Grand River Dam Authority, Vinita, Oklahoma

Men and machines are dwarfed by the towering arches of the Grand River Dam. In the foreground is a temporary closure section, with a portion of the river's flow diverted through an opening.





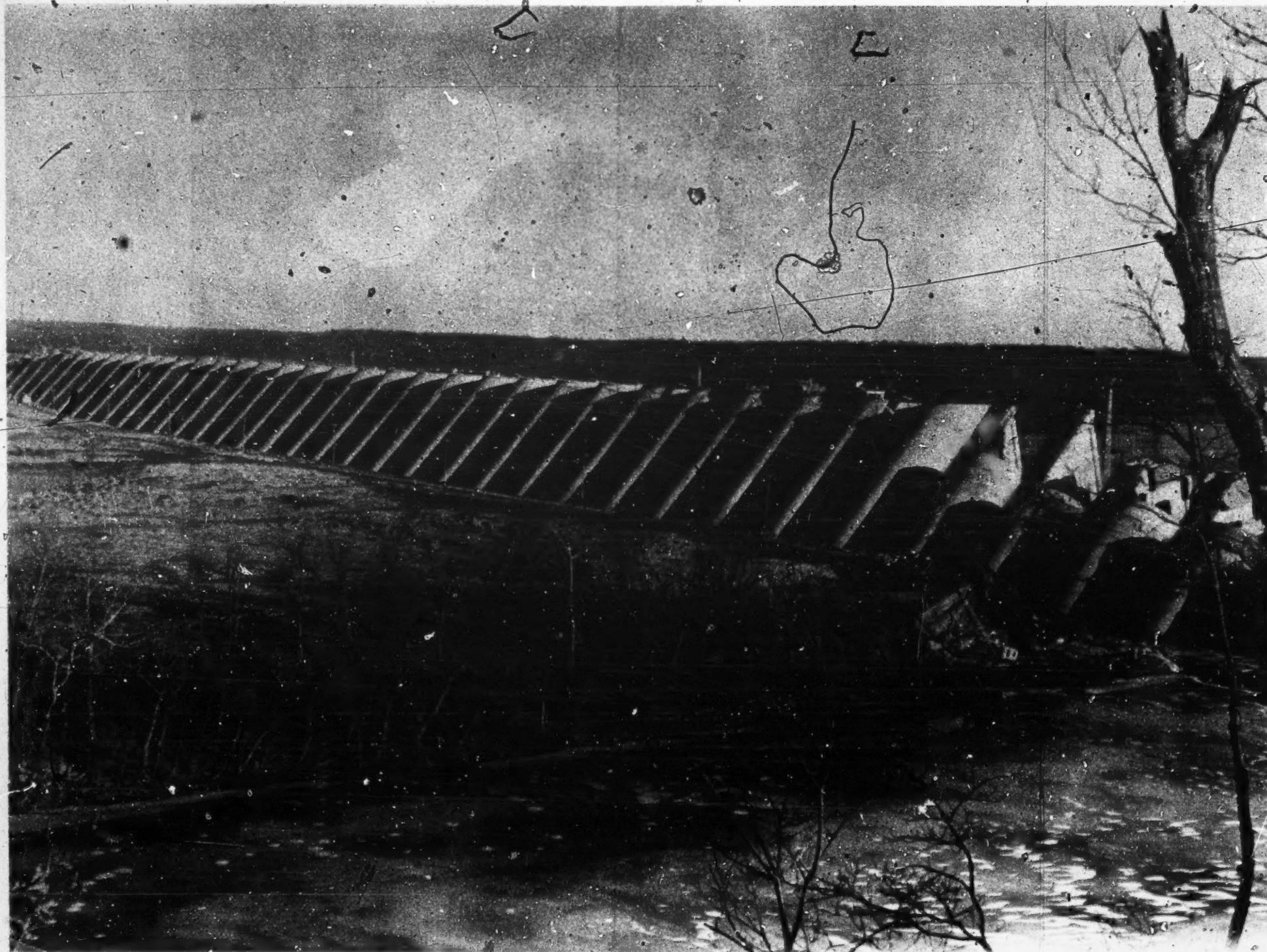




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GOVERNMENT EXHIBIT 14(c)



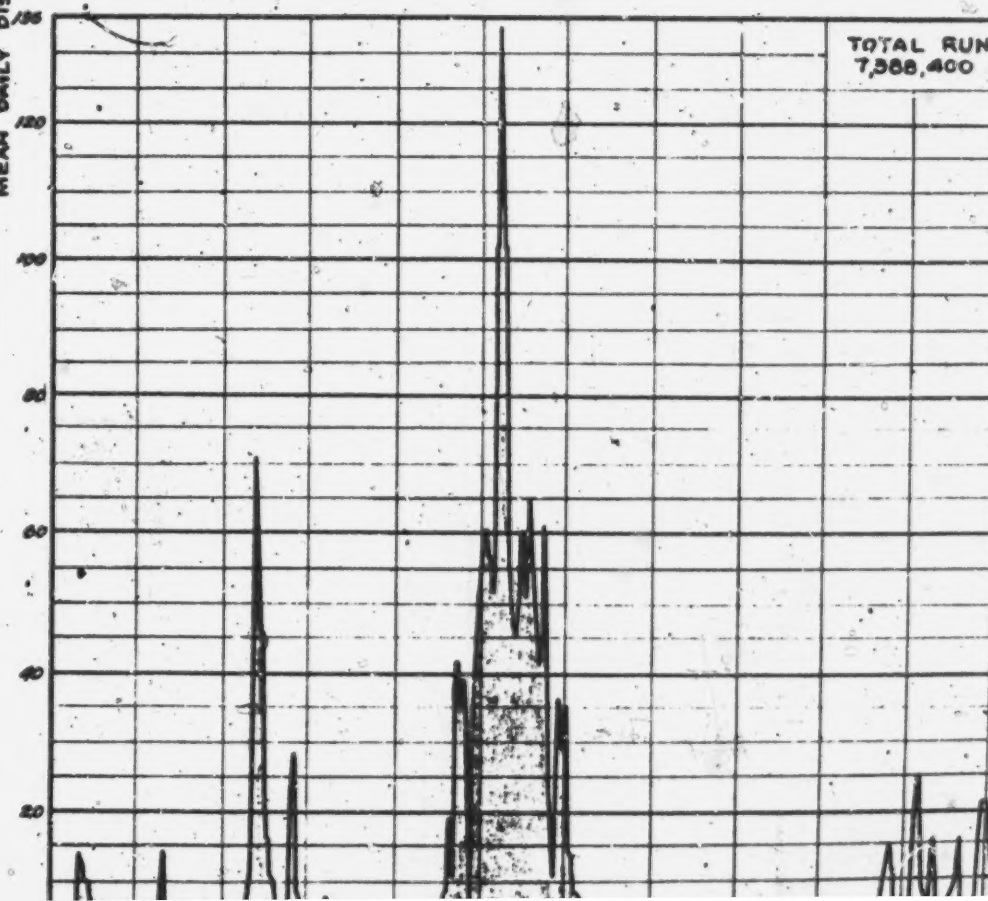
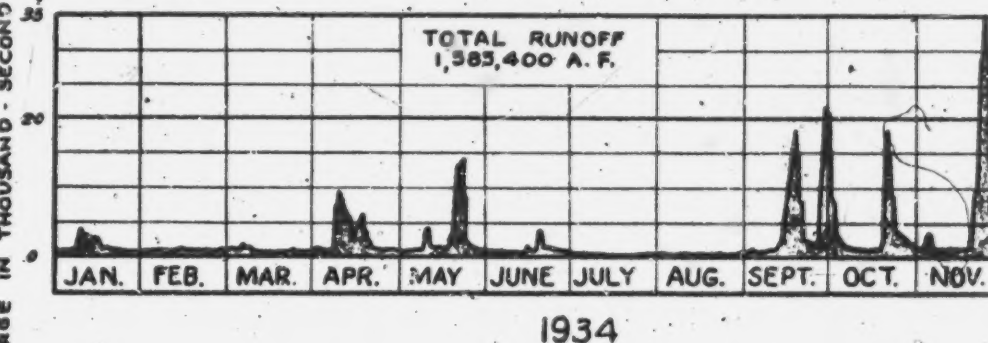
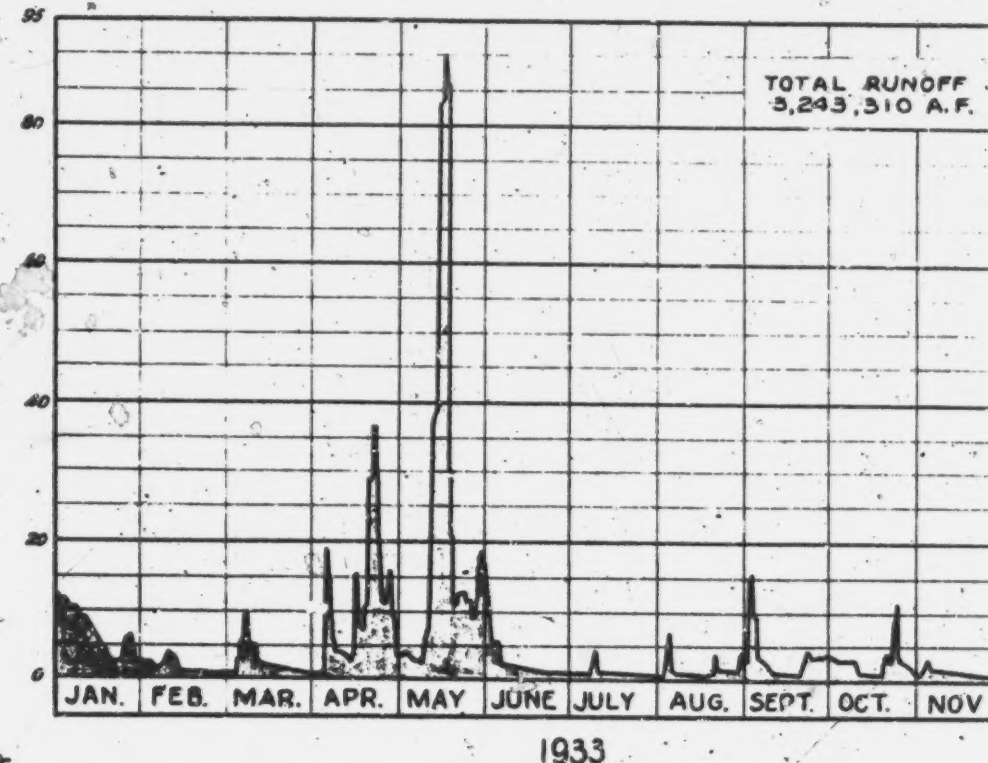
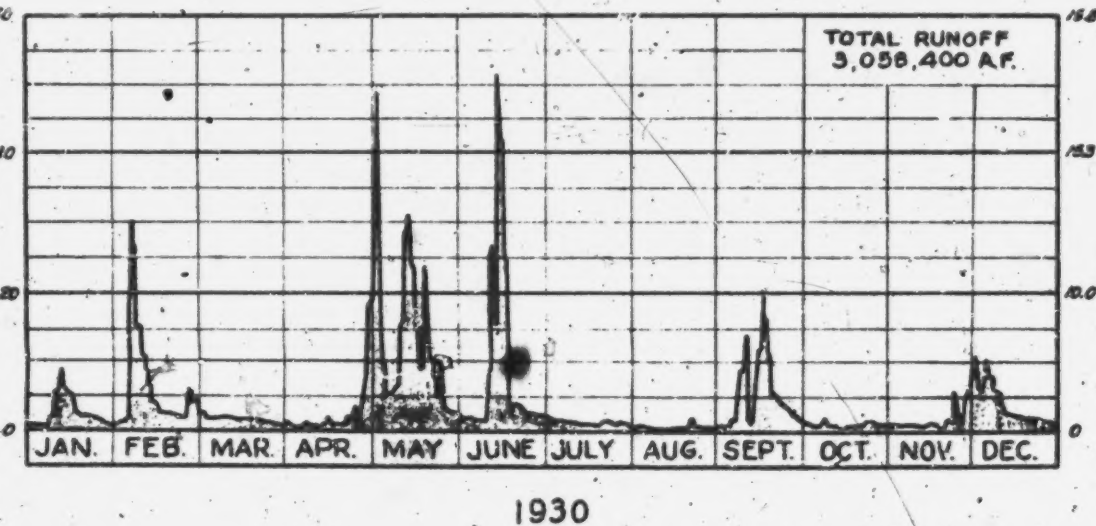
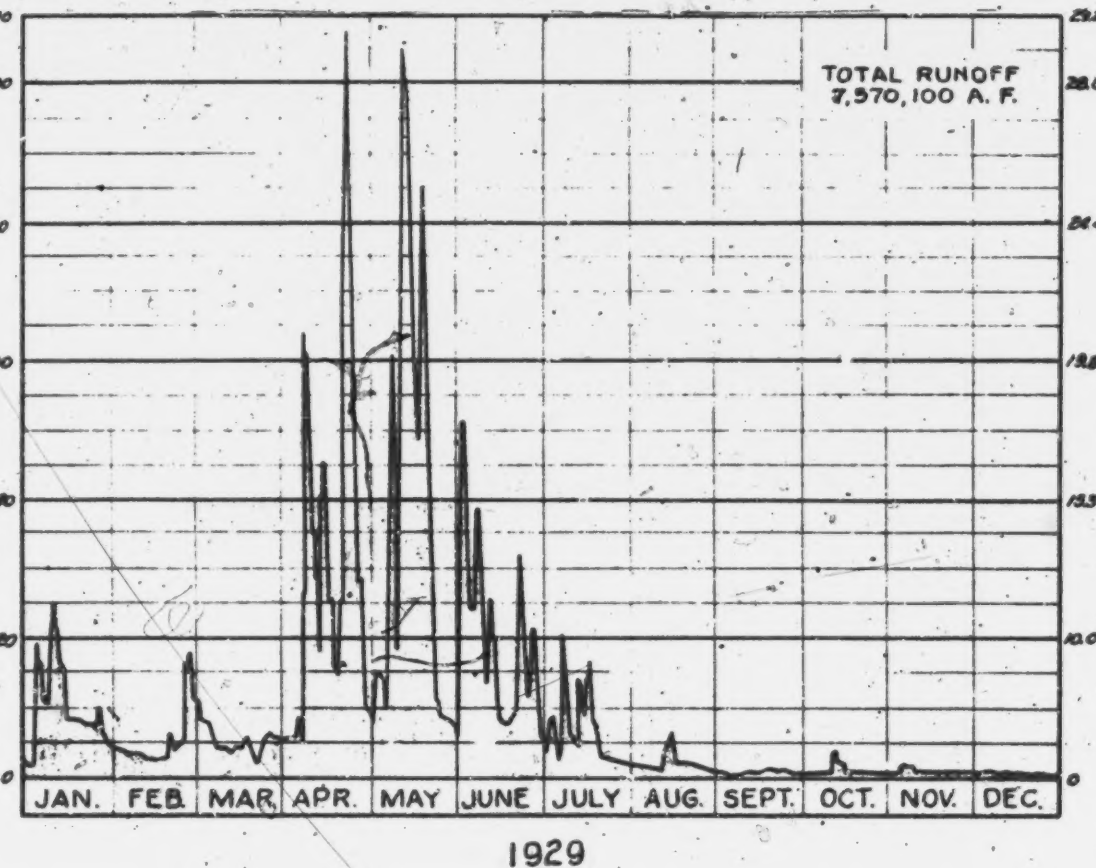
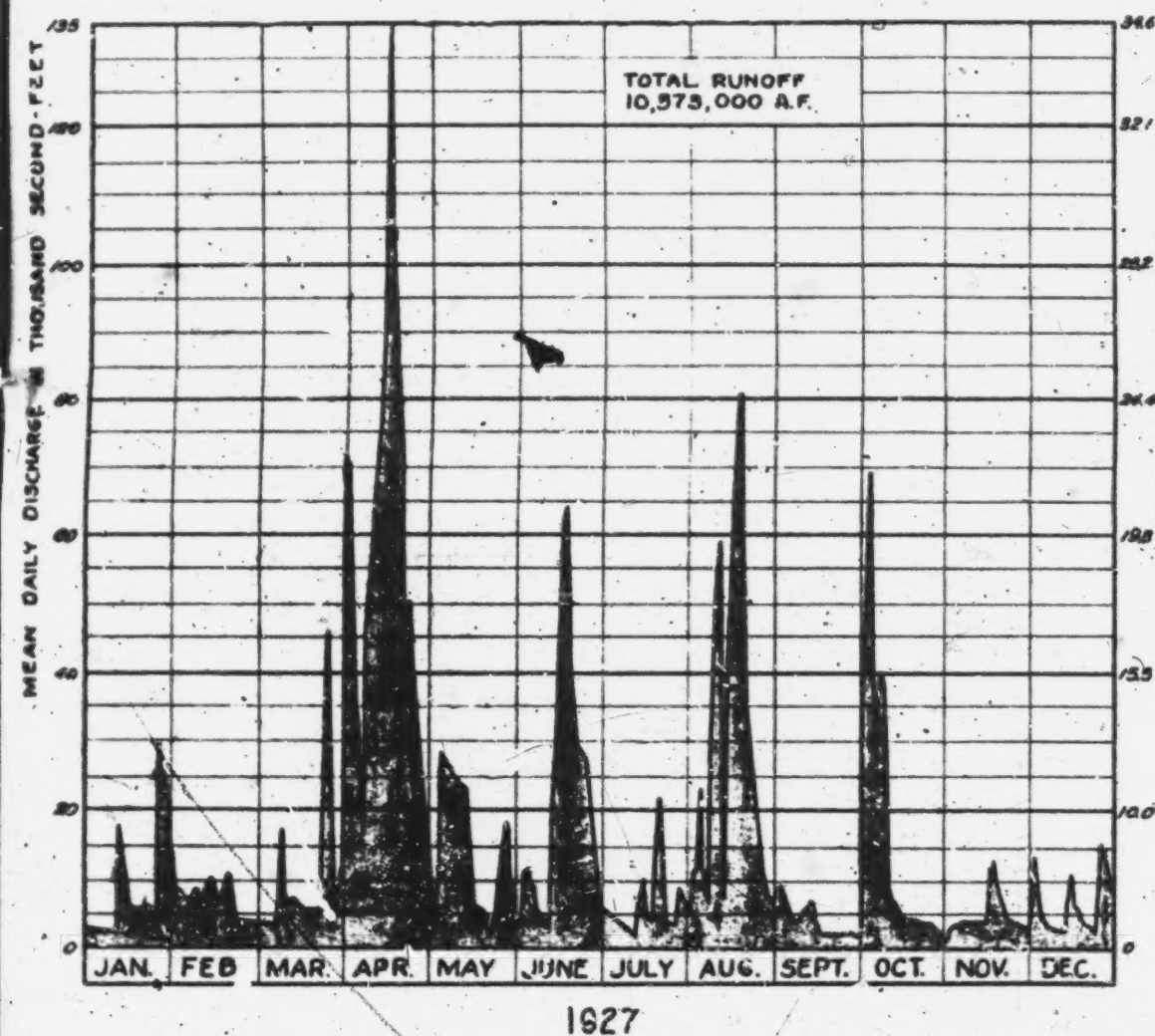
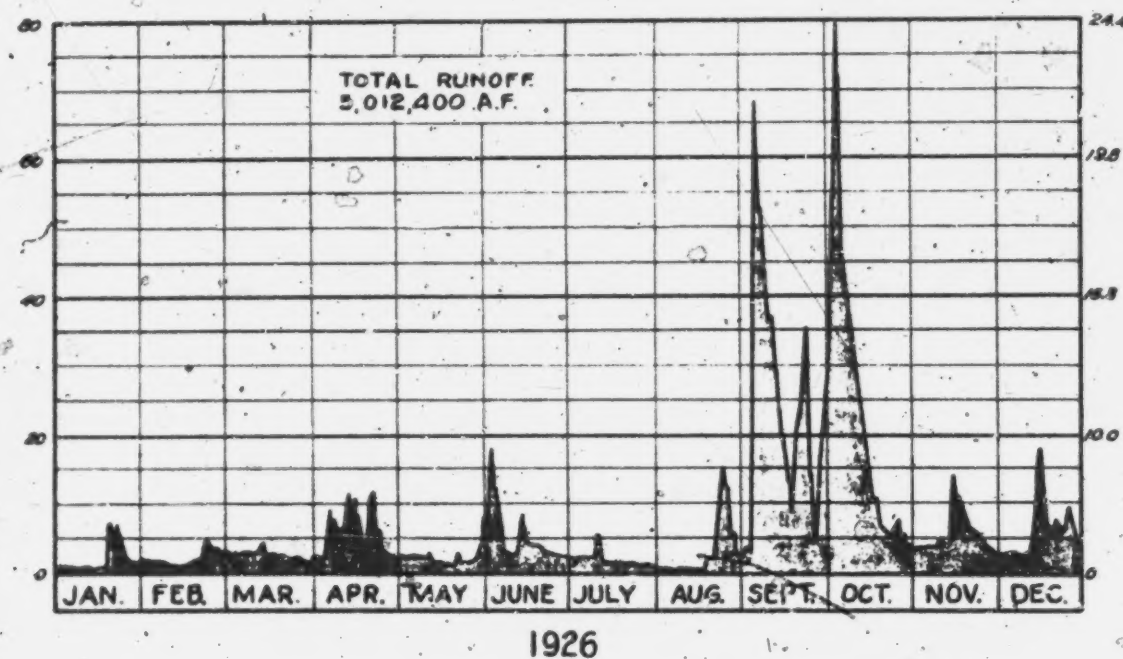
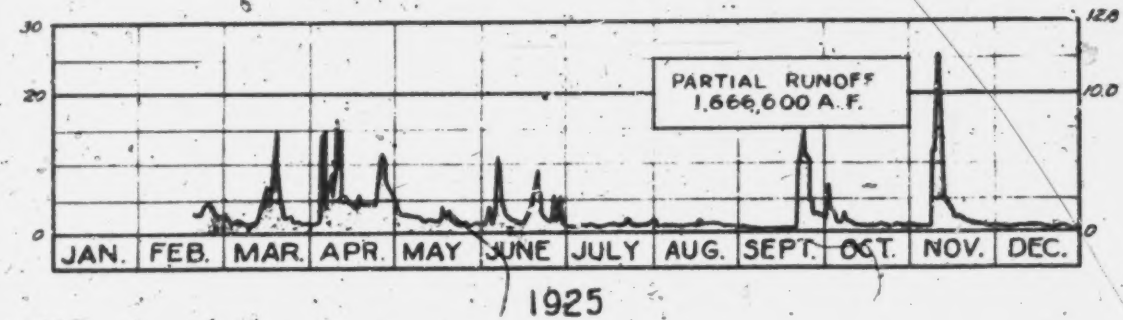
## GOVERNMENT EXHIBIT 14(d)

Grand River Project—Pensacola Dam  
Holway and Neuffer, Engineers

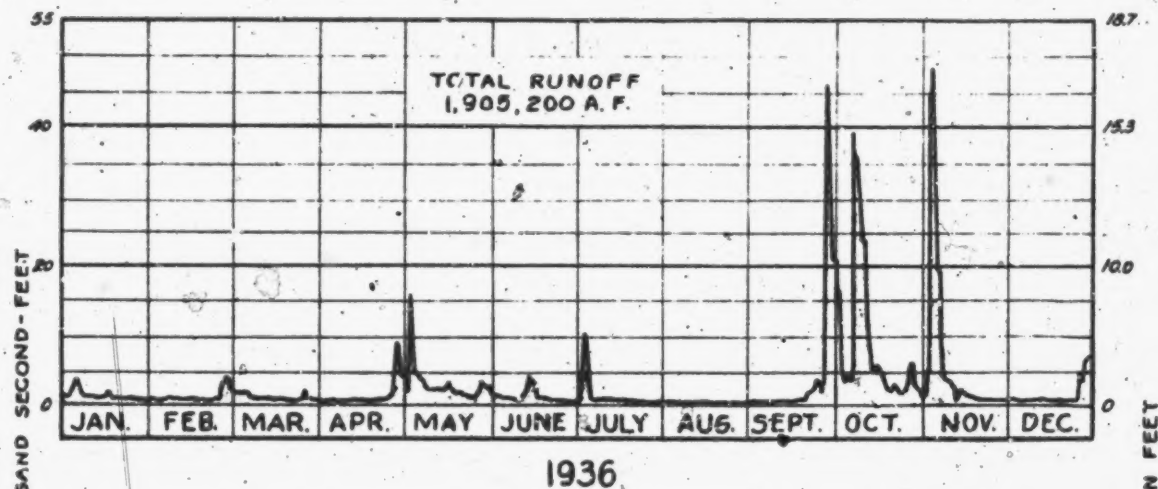
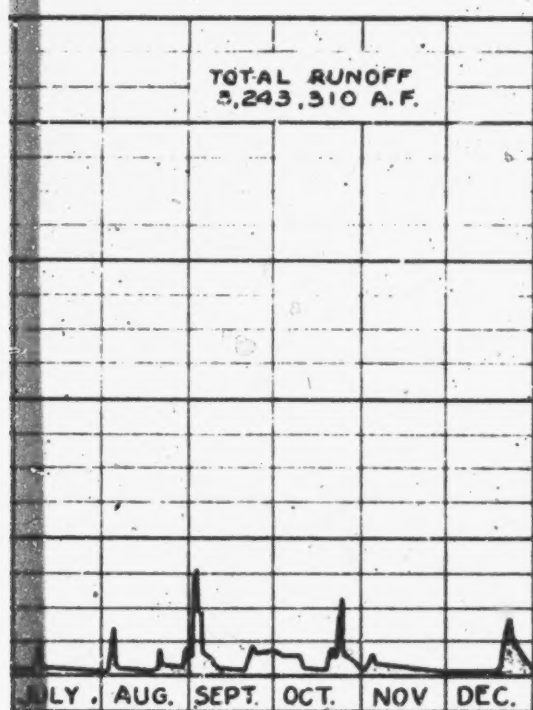
1—View of the upstream side of the Pensacola Dam  
ing east showing completed arches and partially com-  
ed arches and buttresses, and four spans of the highway  
on the top of the dam. Height of buttresses at right  
approximately 150 feet from river. One of the tempo-  
openings at extreme right of picture. The tall light  
ere show above the dam. Spillway is at extreme left  
side of the picture.



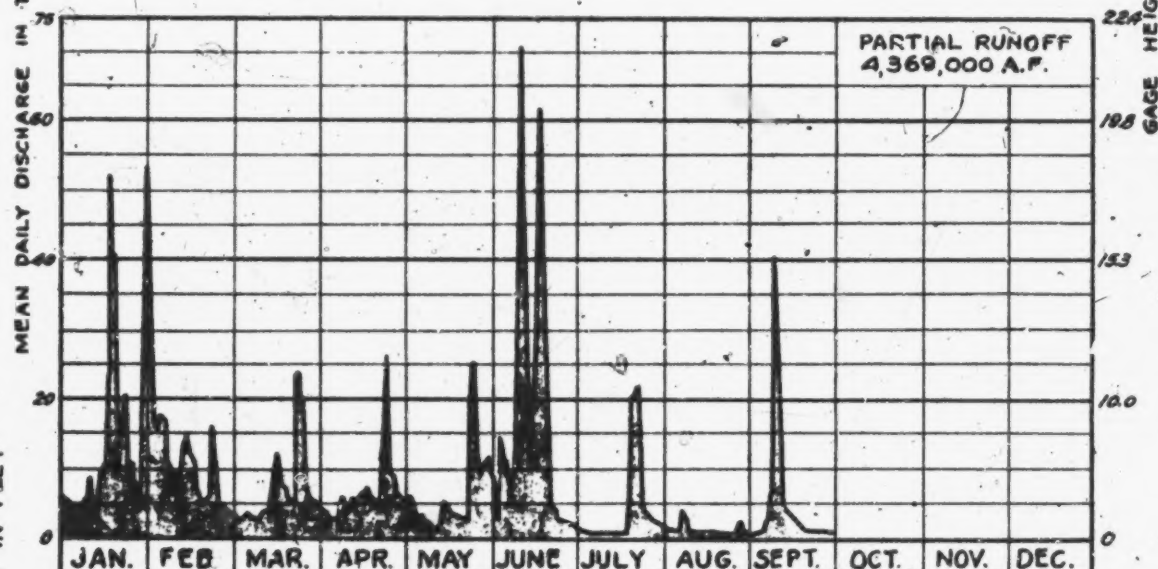
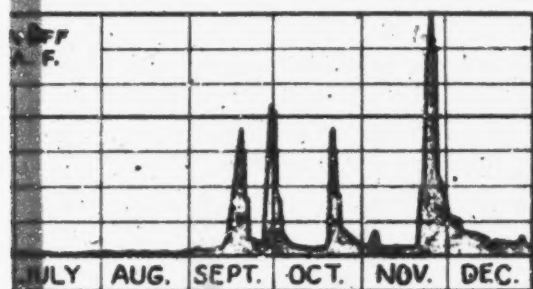




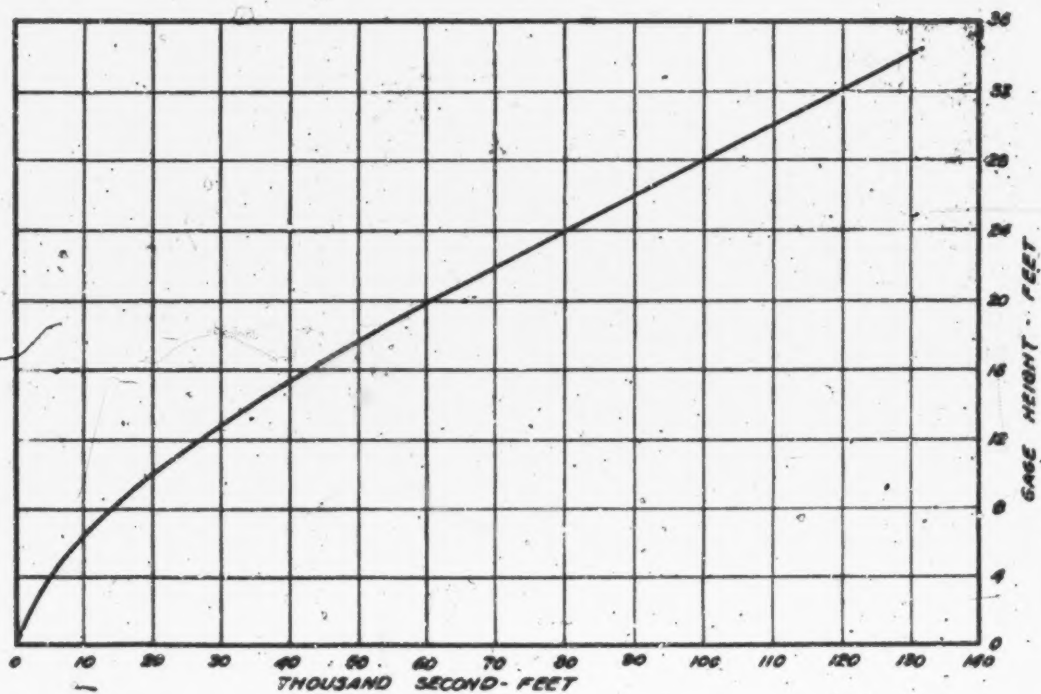
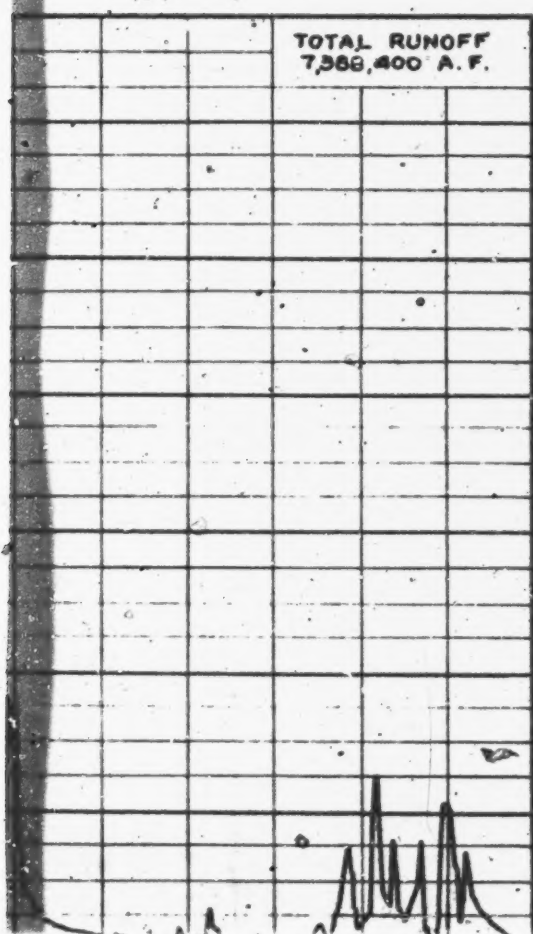




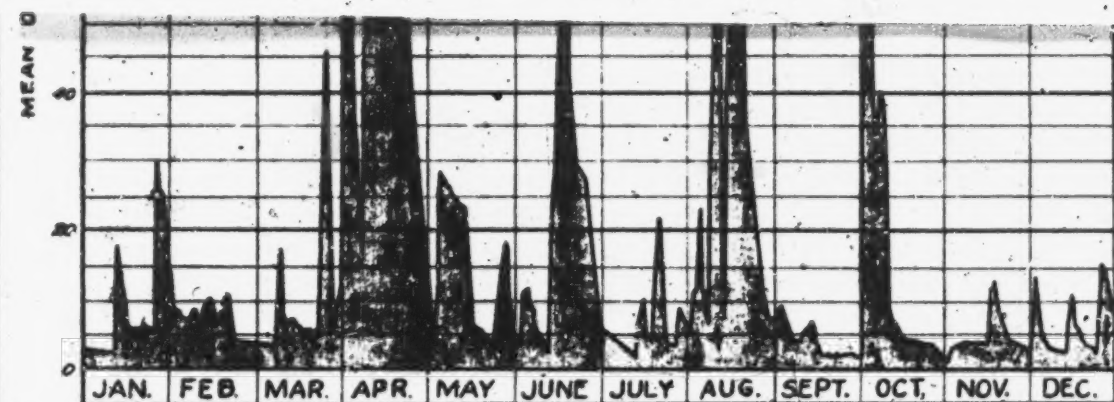
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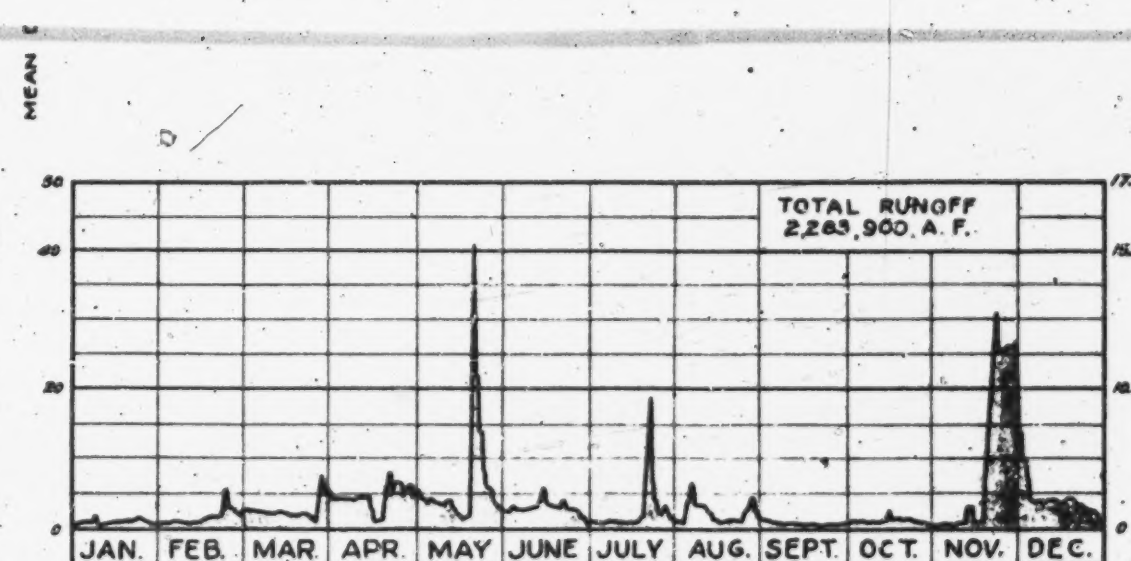
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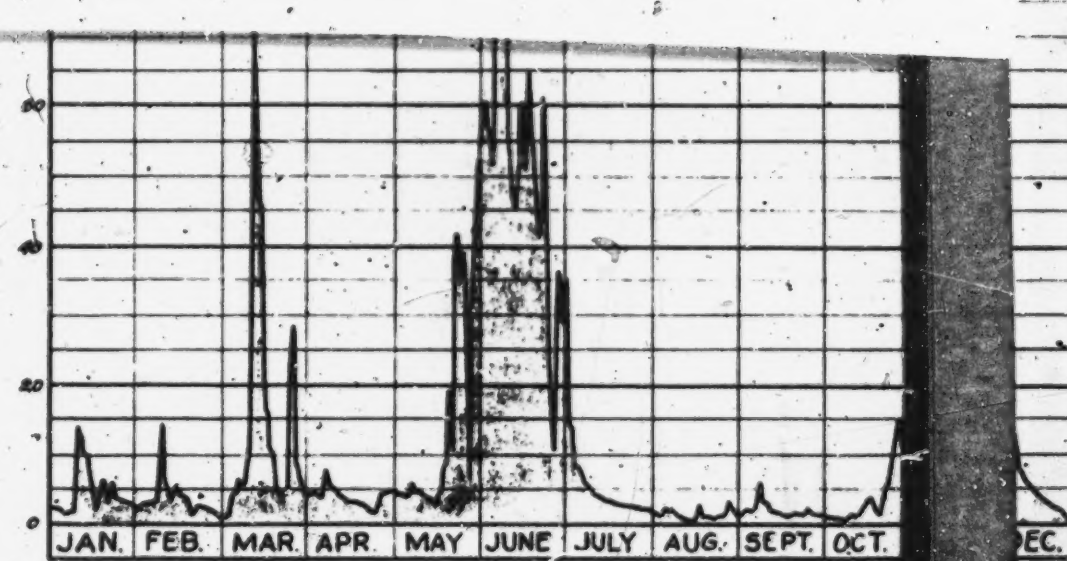




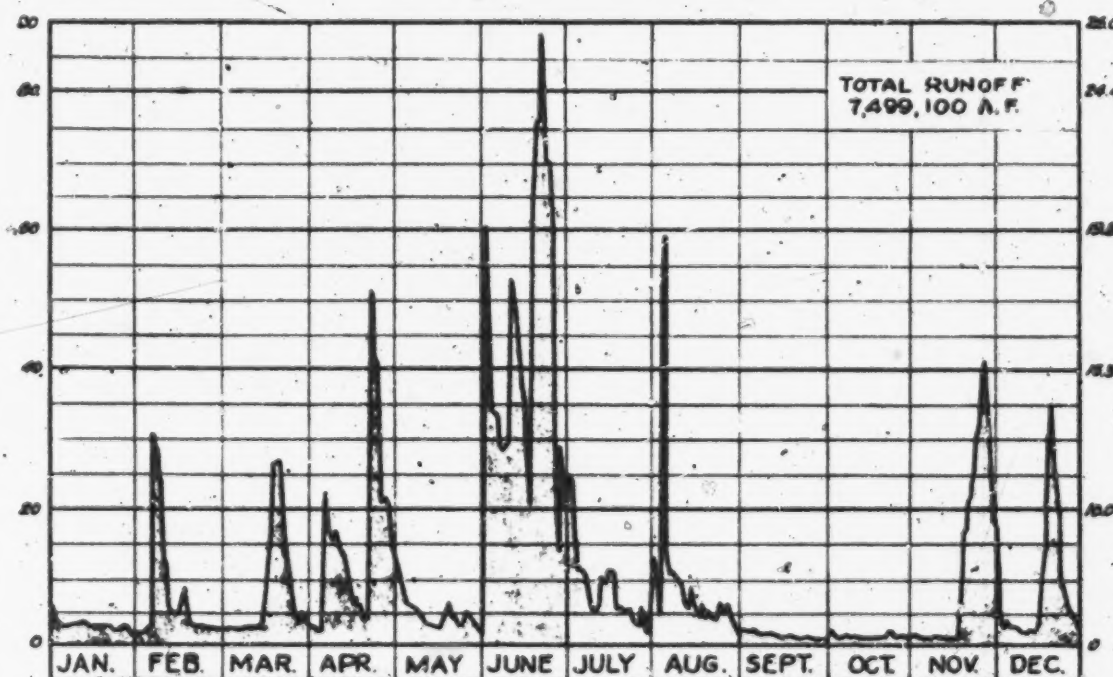
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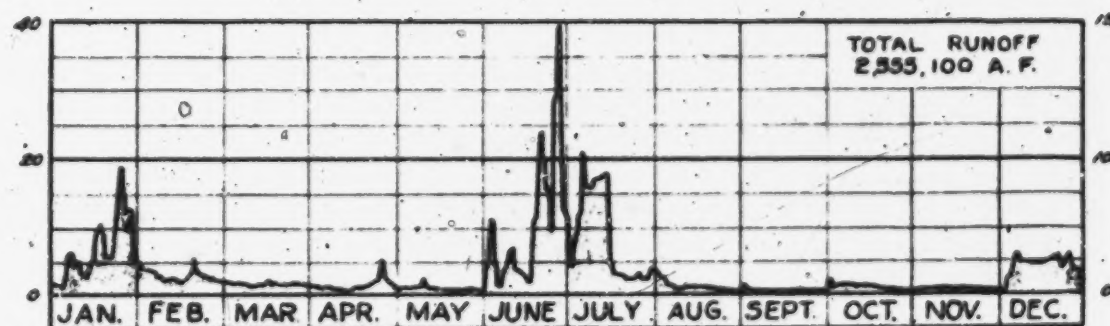
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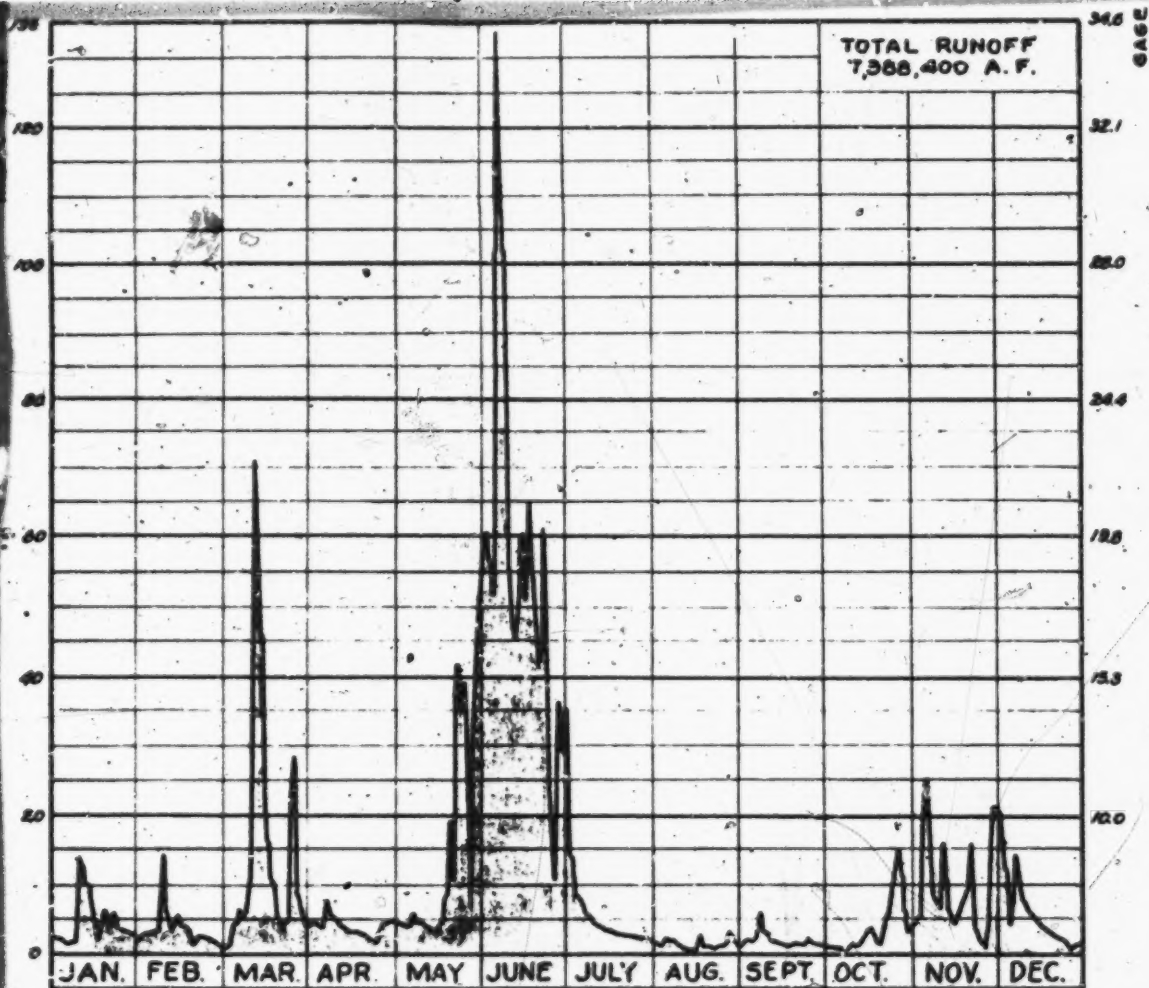
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1932

#### NOTES.

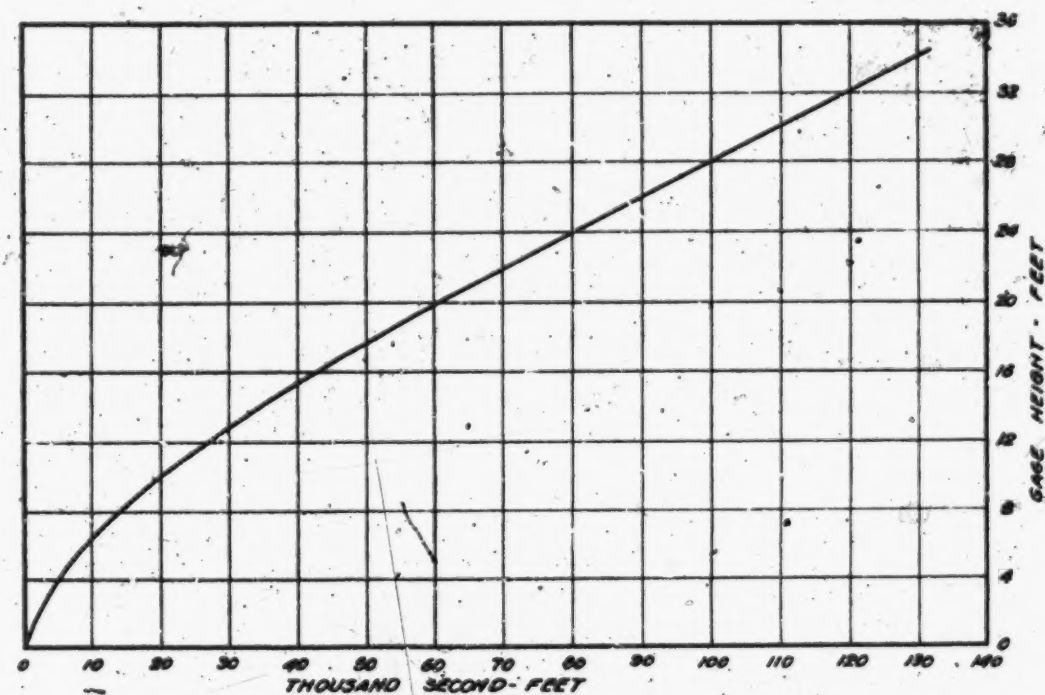
Data U.S.G.S gaging station, chain gage southeast  $\frac{1}{4}$  Sec. 27, T. 25 N, R. 23 E. - 3.5 miles north of Grove, Oklahoma and 3 miles below Spring Lake. Drainage area above gage 10,045 square miles. Pensacola Dam site 28 miles downstream from gage. Drainage area above dam - 10,415 sq. mi.



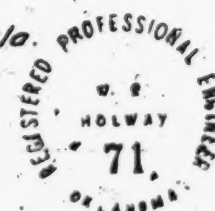
1935

#### NOTES

Data U.S.G.S. gaging station, chain gage in southeast  $\frac{1}{4}$  Sec. 27, T. 25 N., R. 23 E. - 3.5 miles northwest of Grove, Oklahoma and 3 miles below Spring Branch. Drainage area above gage 10,045 square miles. Pensacola Dam site 28 miles downstream from Grove gage. Drainage area above dam - 10,415 sq. miles.



Rating Curve of  
Grand - Neosho River  
U.S.G.S. Gage near Grove, Okla.  
El. 669.11 - Zero



## GRAND RIVER PROJECT PENSACOLA DAM

DAM AND POWER HOUSE  
HYDROGRAPHS

GRAND RIVER DAM AUTHORITY

Holway and Neuffer  
Engineers

Scale As shown

1938

CONTRACT NO. 7

SHEET NO. 4 OF 72



March 21, 1940

Mr. W.R. Holway,  
Chief Engineer,  
Grand River Dam Authority,  
Vinita, Oklahoma.

Dear Sirs:

You are hereby notified that the undersigned, Massman Construction Company, General Contractor on Pensacola Dam, Contract No. 7 with the Grand River Dam Authority, will proceed to close five of the six 8 x 10 foot openings under arches 7 and 8 in Pensacola Dam across Grand River, in accordance with closure schedule heretofore submitted, at 6:00 o'clock p. m., March 21st, 1940.

MASSMAN CONSTRUCTION COMPANY,

By Richard L. Dutton  
its Attorney.

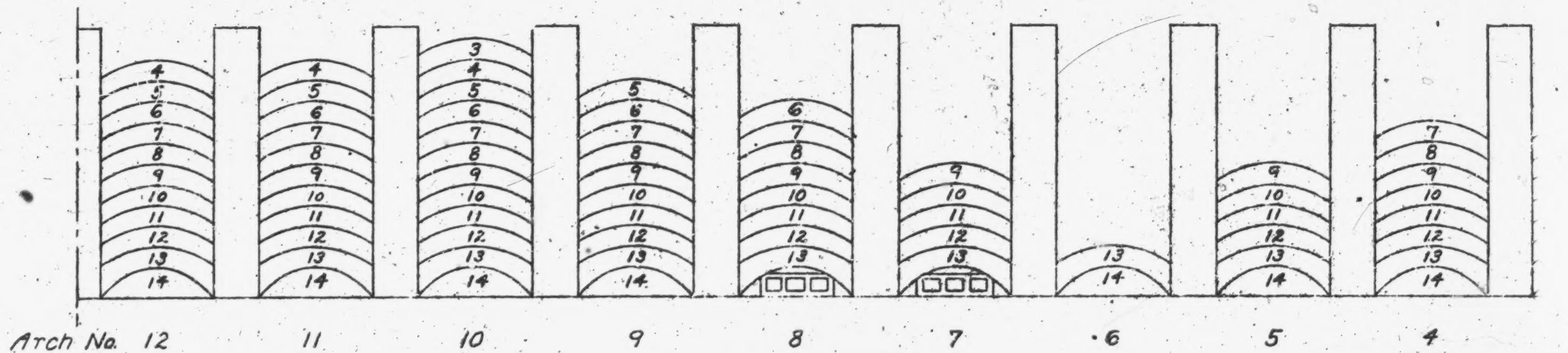
RLW-cc

*delivered in person to Mr. Holway  
March 21, 1940 2 o'clock P.M.*

*This action is satisfactory to  
me.*

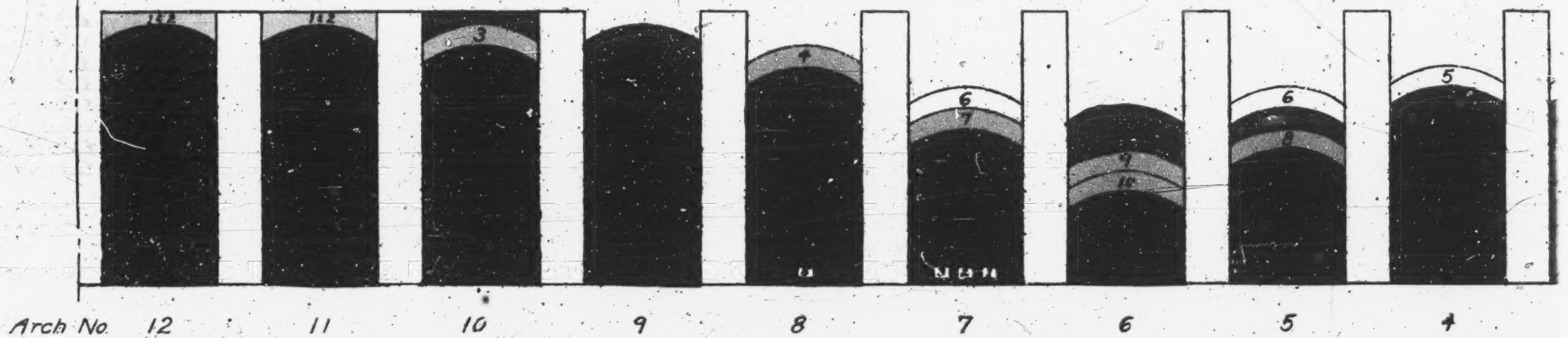
*W.R. Holway  
Chief Engineer*

169



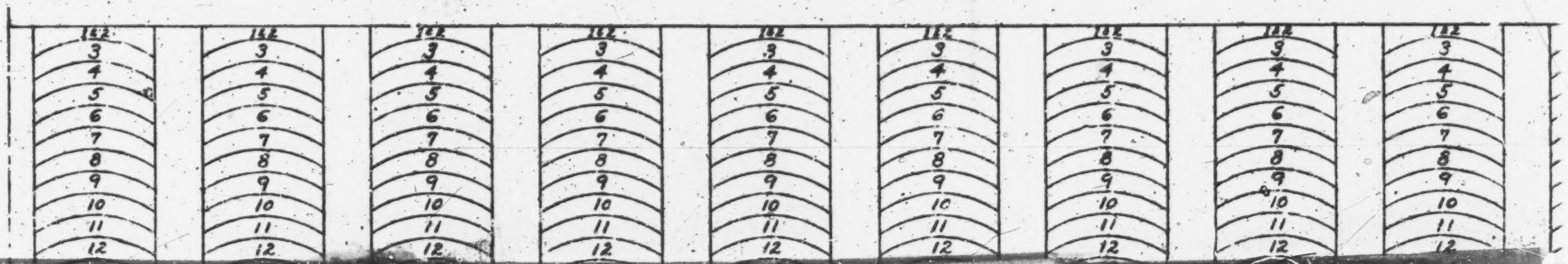
Upstream Elevation - March 1, 1940

Note: Penstock Supp.

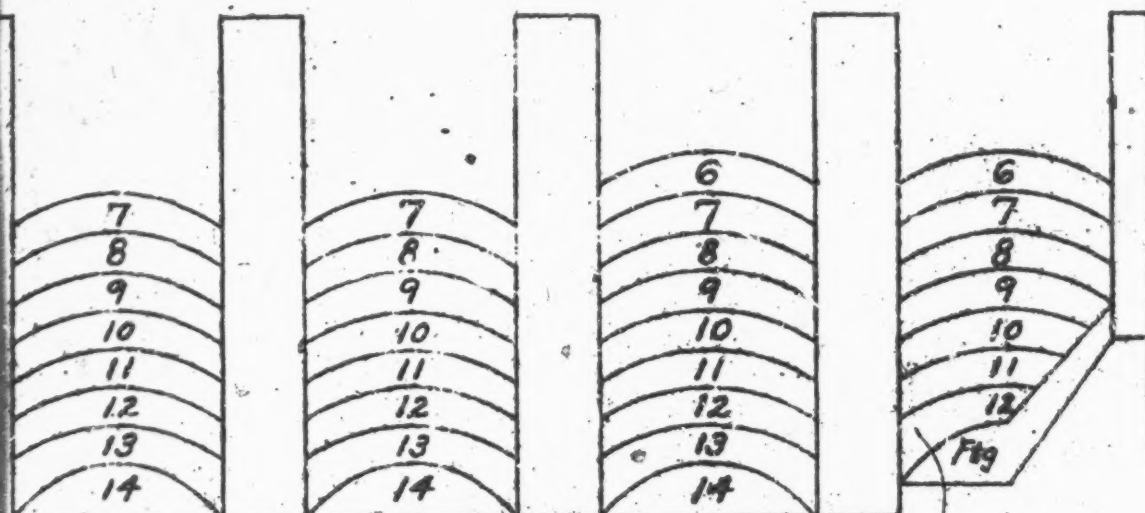


Upstream Elevation March 15, 1940

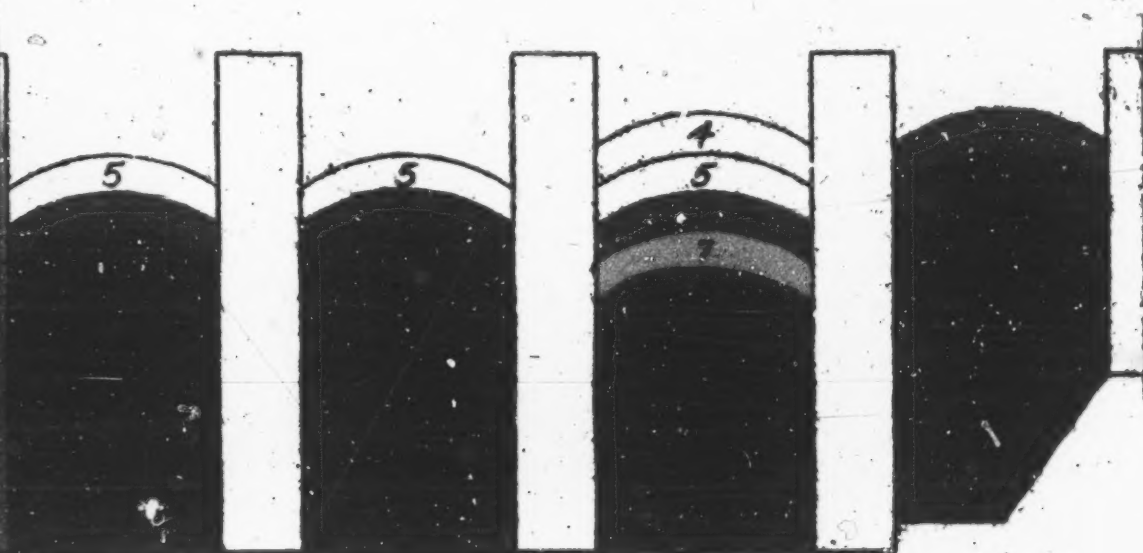
Note: 8'x10' Openings





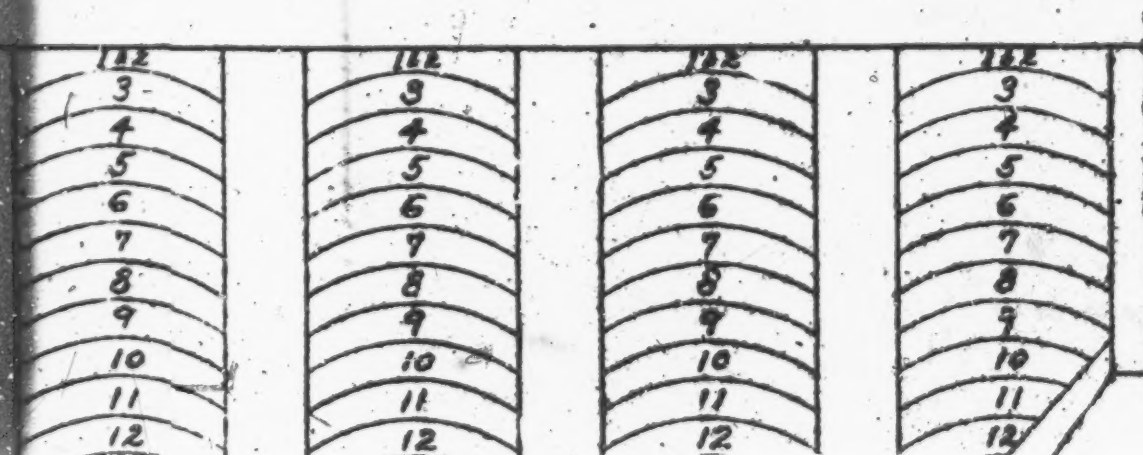


4 3 2 1  
 Penstock Supports & Penstocks complete by March 1



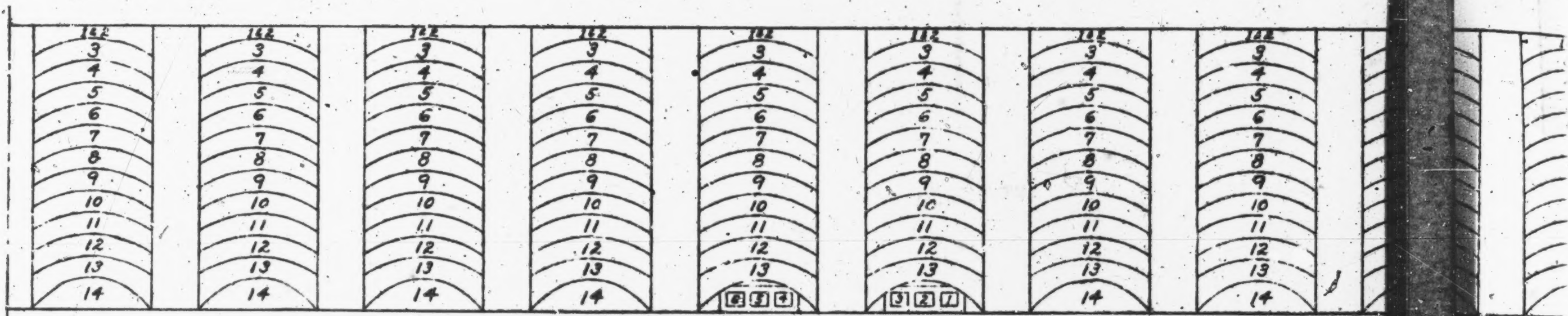
4 3 2 1

8'x10' Openings No's 1, 2, 3, 4, & 6 to be closed about March 15.



Upstream Elevation March 15, 1940

Note: 8' openings. No.



Arch No 12

11

10

9

8

7

6

5

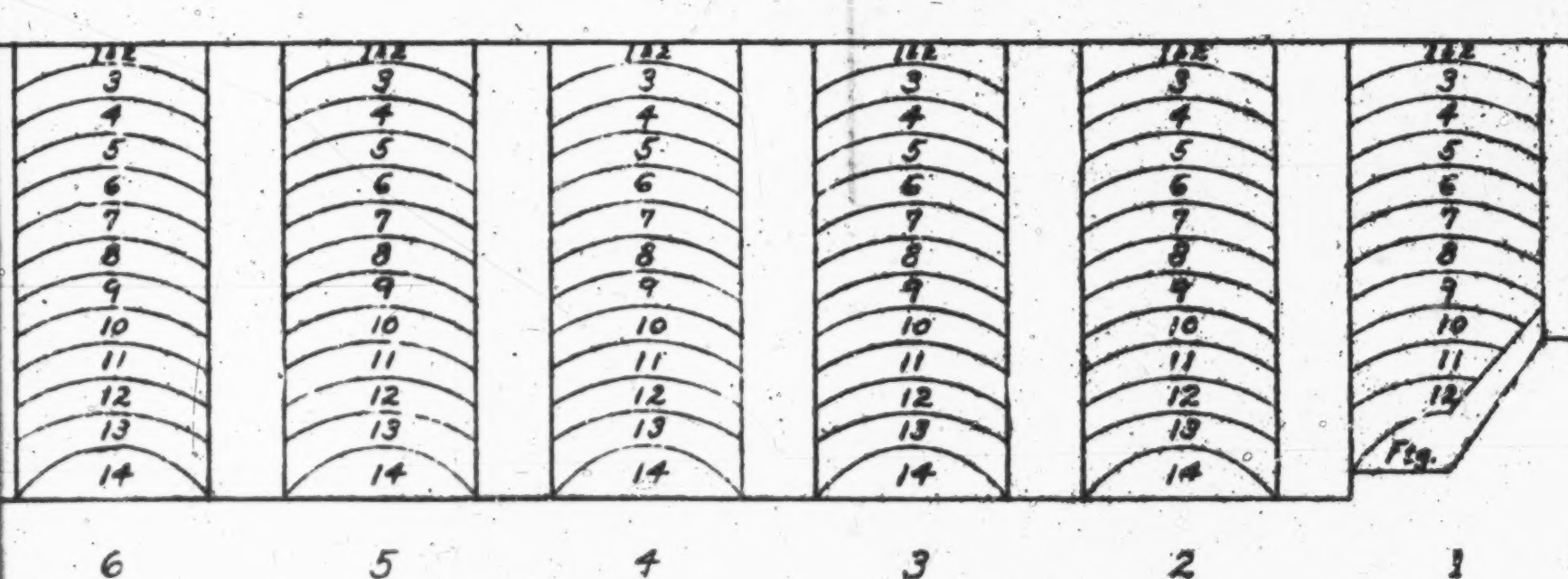
Upstream Elevation April 1, 1940

Note: Fir... sure con



on March 15, 1940

Note: 8'x10' Openings No's 1, 2, 3, 4, & 6 to be closed about March 15.



RED: arches poured as of March 14

YELLOW: arches poured as of March 19, morning

ORANGE: arches poured as of March 24, night

April 1, 1940

Note: Final Closure complete by April, 1

MASSMAN CONSTRUCTION CO.  
KANSAS CITY, MO.

BRAND RIVER PROJECT - PENSACOLA DAM

*Final Closure*

DRAWN BY M.P.W. CONTRACT NO.         
CHECKED BY        DRAWING NO. 25  
DATE 2/10/40 SCALE 1" = 50'

uninterruptedly at such rate of progress as will insure full completion thereafter within eighteen (18) calendar months from and after the date of the said Work Order; and

Whereas, the said Work Order was issued and dated July 26, 1938, thus making the completion date for the contract January 26, 1940, which completion date has heretofore been extended to March 26, 1940; and

[fol. 172] Whereas, said Article V further provides that time is of the essence of each and every portion of the contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever, and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of the contract; and

Whereas, under Article VIII of said contract the parties thereto agreed that the Massman Construction Company is performing the work embraced in the contract not as an agent or servant of the Grand River Dam Authority, but as an independent contractor; and

Whereas, under Article XV of the contract it is provided that the performance of the contract and the work thereunder is at the risk of the contractor until the final acceptance thereof and payment therefor, and that the contractor shall take all responsibility for the work and shall bear all losses resulting to him on account of the amount or character of the work or on account of the weather, floods, fire, wind storms, or other action of the elements, or any cause or causes whatsoever for which the Authority is not responsible, and if the work or any part or parts thereof is destroyed or damaged from any of said causes the contractor shall, at his own cost or expense, restore the same or remedy the damage; and

Whereas, it is provided in said contract under Article XXI that if the Engineers shall be of the opinion and shall certify in writing to the Board of Directors, or the Board shall be of the opinion that the work has been abandoned or that the requirements of the contract as to the rate of progress have not been fulfilled, or that the contractor has failed in any respect to prosecute the work with promptness or diligence, or has neglected to fulfill the requirements of the contract, the Authority may require the sureties on the performance bond to complete said work at the option of the Authority; and



Whereas, Hon. Leon C. Phillips, Governor of the State of Oklahoma, has heretofore, on the 13th day of March, 1940, issued an executive military order declaring martial law on the Southwest Quarter (SW $\frac{1}{4}$ ) of Section 14, Township 23 N—Range 21 E in Mayes County, Oklahoma, whereon is located that part of the dam and power house on which construction work is now in progress, and authorized and directed Brigadier General Louis A. Ledbetter, the Adjutant General, to occupy said military zone with the military forces of the State and to maintain the same with [fol. 173] the unit or units of the National Guard, and directed the said military forces to stop all work on said Grand River Dam in said zone and permit no one to enter or pass through said zone except only the authorized representatives of the Governor and the agents and military forces under the command of the Adjutant General of the State of Oklahoma; and

Whereas, said military forces under the command and at the direction of the Governor as commander-in-chief, have taken possession of said military zone in accordance with said order; and

Whereas, the Grand River Dam Authority is not responsible for such interference with said construction work; and

Whereas, the cessation or discontinuance of construction on said dam at this time may, and in the opinion of the Authority will, result in great and irreparable damage and loss to the Authority if the dam is not closed so as to impound the waters from heavy rainfall usually and customarily occurring in the months of April and May, and may and will, in the opinion of the Authority, result in great and irreparable damage and loss to the contractor on account of preventing the completion of the contract within the completion date, and on account of subjecting the unfinished dam structure to the extra hazards of high flood waters discharging at high velocity through the unfinished portion of the dam, for which loss the Authority will in no wise be responsible;

Now, Therefore, Be It Resolved by the Board of Directors of the Grand River Dam Authority that the Massman Construction Company and each and every surety on the contractor's performance bond be immediately notified in writing that the Grand River Dam Authority disclaims any and all responsibility for any losses that the Massman Construction Company, or its sureties, may sustain by reason of the

cessation, suspension or discontinuance of construction work under said contract incident to or growing out of the action of the Governor of the State in declaring martial law at the dam site and enforcing with the National Guard the cessation, suspension or discontinuance of said work; and that it is incumbent upon the Massman Construction Company and its sureties to protect the contractor and the Grand River Dam Authority from any and all unlawful or illegal interference with the contractor's performance and completion of his contract with the Authority, and that the contractor and its sureties must, under all the penalties of its contract and the law, continue regularly, diligently and uninterruptedly the construction work on said dam and complete the same on or before the completion date of the contract, and must take such steps or proceedings as may be necessary to insure the uninterrupted continuance of construction work, and that the Authority will hold the contractor and its sureties liable for any and all losses sustained by the Authority resulting directly or indirectly from the cessation, suspension or discontinuance of construction work required by the said contract.

---

CERTIFICATE

STATE OF OKLAHOMA,  
County of Craig:

I, Sam D. Rose, Secretary of the Grand River Dam Authority, a conservation and reclamation district, and a public corporation organized and existing under the Laws of the State of Oklahoma, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors of the Grand River Dam Authority at a recessed meeting thereof held in Vinita, Oklahoma, on the 14th day of March, 1940, at which meeting a quorum of the Board was at all times present and acting.

In Witness Whereof I have hereunto set my hand and affixed the corporate seal this 25th day of March, 1940.

Sam D. Rose, Secretary. (Official Seal Grand River Dam Authority.)

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[fols. 175-177] Clerk's certificate to foregoing exhibits omitted in printing.

[fol. 178] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION  
OF THE PARTS OF THE RECORD TO BE PRINTED—Filed July  
12, 1940

Come now Leon C. Phillips, individually and as Governor of the State of Oklahoma; Mac Q. Williamson, individually and as Attorney General of the State of Oklahoma; Louis A. Ledbetter, individually and as Adjutant General of the National Guard of the State of Oklahoma; S. H. Singleton, George Meacham and H. E. Bailey, individually and as members of the State Highway Commission of the State of Oklahoma, the appellants in the above entitled cause, and state that the points upon which they intend to rely in this case in this Court in support of their contentions that the specially constituted United States District Court erred, are as follows:

[fol. 179] 1. That said action is a suit against the State of Oklahoma and therefore the Court had no jurisdiction, exclusive jurisdiction being vested in the Supreme Court of the United States (28 U. S. C. A., Section 341; Section 233 Judicial Code) and the Court erred in holding that the action is not a suit against the State of Oklahoma.

2. That the Court was without power or authority because of the provisions of 28 U. S. C. A., Section 379, (Section 265 of the Judicial Code) to enjoin the prosecution of the case of State of Oklahoma ex rel. Leon C. Phillips, Governor of the State of Oklahoma and the State Highway Commission of the State of Oklahoma, plaintiff, vs. Grand River Dam Authority; Ray McNaughton, H. Eichenberger, Earl Ward, R. P. Colley, and M. Duncan, as members of the Board of Directors of the Grand River Dam Authority; T. P. Clonts, General Manager of the Grand River Dam Authority, W. R. Holway, Chief Engineer of the Grand River Dam Authority; and Massman Construction Company, a corporation, defendants, No. 15,174, pending in the District Court of Ottawa County, Oklahoma, and the trial court erred in enjoining the prosecution of said State Court proceeding.

3. That the State Court Action was an adversary proceeding and the Court erred in holding that it was not an adversary proceeding but was in effect collusively brought,

because such a conclusion is contrary to the evidence and in conflict therewith.

4. That the State Court Action was not in effect a suit against the United States, and the Court erred in holding that the same was a suit against the United States.

5. That this is not a case which is cognizable by the specially constituted three-judge court, that said court had no jurisdiction to grant the temporary injunction and erred in holding that it had jurisdiction to grant the temporary injunction.

6. That the court erred in finding that any rights or property of the United States had been interfered with or injured by the use of the State Militia, the uncontradicted evidence being to the contrary, and the court abused its discretion in enjoining the use of the Militia.

[fol. 186]. Appellants further state that only the following parts of the record, as filed in this court, are deemed necessary to be printed for the consideration of the points set forth above, viz.:

Title of Paper	Record Page
Complaint .....	2

Exhibit A

Do not print all of Exhibit "A" to the Complaint but state:

(Exhibit "A" to the Complaint is a copy of the Indenture dated April 1, 1938, between the Grand River Dam Authority and the First National Bank of Miami, Oklahoma, Trustee, pursuant to which the bonds of the Grand River Dam Authority held by the United States were issued.) The form of said bonds is set forth in said Indenture and reads as follows:

Print form of bonds as set forth on pages 22 to 29, inclusive, of the record .....

22-29

Print: Section 4.03 of Article IV of the Indenture on page 47 of the record reads in part as follows: .....

47

"Section 4.03. The monies in the Construction Fund shall be used for the payment or reimbursement of the Construction Cost of the Project or



## Title of Paper

## Record Page

of the particular Improvements for which such monies shall have been received. For the purposes of this Indenture, the Construction Cost (of the Project or of Improvements) shall be deemed to include the following items, without intending thereby to limit or restrict (except as expressly provided) any proper definition of such cost:

“(a) The cost of acquisition of all water, water rights, reservoir and plant sites, and other necessary lands, or options therefor, and the cost of the relocation or removal of highways, schools, railroads, and other structures.

“(b) The cost of acquisition of any canal or transmission line rights of way, easements, licenses or privileges, or options therefor.

“ . . . ”

## Exhibit B.

Do not print Exhibit “B” to the Complaint but state:

(Exhibit “B” to the Complaint is the Grant Offer of the United States to the Grand River Dam Authority, dated October 16, 1937, the acceptance thereof and subsequent waivers modifying same.)

## [fol. 181] Exhibit C.

Do not print Exhibit “C” to the Complaint but state:

(Exhibit “C” to the Complaint is a copy of a license from the Federal Power Commission to the Grand River Dam Authority to build the dam on the bed of the Grand River, Project 1494.)

## Exhibit D.

(Print all of Exhibit “D”.)

Restraining Order issued out of the District Court of Ottawa County, Oklahoma, in Case No. 15174 . . . . .  
Petition filed in the District Court of Ottawa County, Oklahoma, in Case No. 15174 . . . . .

Title of Paper	Record Page
Motion to Dismiss on behalf of Leon C. Phillips, individually and as Governor, et al.	229
Order overruling Motion of Leon C. Phillips, individually and as Governor of the State of Oklahoma's Motion to Dismiss	253
Clerk's minutes showing dismissal as to State Highway Commission	254
Motion of Leon C. Phillips, individually and as Governor of the State of Oklahoma, et al., to vacate restraining order and denying application for temporary and/or interlocutory injunction	255
Order overruling Motion of Leon C. Phillips, individually and as Governor of the State of Oklahoma, et al., to vacate restraining order and denying application for temporary and/or interlocutory injunction	257
Defendant's requested Findings of Fact and Conclusions of Law	258
Findings of Fact and Conclusions of Law	278
Preliminary Injunction	299
Petition for Appeal	302
Assignment of Errors	304
Statement of basis on which Appellants contend the Supreme Court of the United States has jurisdiction to review on appeal the Order or Decree granting the preliminary injunction applied here as required by Supreme Court Rule 12	308
Order allowing appeal	314
Citation on Appeal	315
Statement directing attention to Paragraph 3, Rule 12, of the Supreme Court of the United States	317
[fol. 182] Proof of service for petition for appeal, assignment of errors, jurisdictional statement, order allowing appeal and statement directing attention to Paragraph 3, Rule 12	319
Appellants' praecipe for record	321
The following portions of the transcript of oral Evidence	
Appearances	336
Presentation of Motion to Dismiss	341
Ruling on Motion to Dismiss	341
I. N. Towne	375

Title of Paper	Record Page
Louis A. Ledbetter	402
Harry B. Parris	426
Van T. Moon	508
S. H. Singleton	512
Ray McNaughton	513
Mac Q. Williamson	596
Motion to dismiss temporary injunction	522
Order overruling motion to dismiss temporary injunction	523

## Exhibits

Government's Exhibit No. 1, being Executive Military Order of March 13, 1940	1
--	---

Dated this 11th day of July, 1940.

Mac Q. Williamson, Attorney General of Oklahoma; Bandell S. Cobb, First Assistant Attorney General of Okla.; Address: State Capitol, Oklahoma City, Oklahoma; J. B. Dudley and Duke Duvall, Attorneys at Law, Oklahoma City, Oklahoma; George F. Ramsey and Villard Martin, Attorneys at Law, Tulsa, Oklahoma, Attorneys for the Appellants, Leon C. Phillips, individually and as Governor; Mac Q. Williamson, individually and as Attorney General; Louis A. Ledbetter, individually and as Adjutant General; S. H. Singleton, George Meacham and H. E. Bailey, individually and as members of the State Highway Commission.

[fol. 183] UNITED STATES OF AMERICA,  
State of Oklahoma, ss:

Randell S. Cobb, being duly sworn upon oath, deposes and says that he is First Assistant Attorney General of the State of Oklahoma, and that on the 11 day of July, 1940, he forwarded by registered United States mail copy of the attached "Statement of Points to be relied upon and Designation of the Parts of the Record to be Printed" to each of the following:

The Solicitor General of the United States, Washington, D. C.

Honorable Whit Mauzy, United States District Attorney,  
Tulsa, Oklahoma.

Honorable R. L. Davidson, General Counsel, Grand River  
Dam Authority, Vinita, Oklahoma.

Honorable R. L. Wheatley, Attorney at Law, Vinita,  
Oklahoma.

Honorable E. C. Fitzgerald, Attorney at Law, Miami,  
Oklahoma.

That the above named parties, except the Solicitor General of the United States, were attorneys of record for the appellees in the Court below; that the envelopes containing said copies were properly addressed and were deposited in the United States Post Office at the State Capitol in Oklahoma City, Oklahoma, on the date aforesaid, with postage and registration fees thereon fully prepaid.

Randell S. Cobb.

Subscribed and sworn to before me this 11th day of  
July, 1940. Jean Brawner, Notary Public. My  
Commission Expires: 1-20-41. (Seal.)

[fol. 183½] [File endorsement omitted.]

[fol. 184] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION BY THE UNITED STATES OF AMERICA, APPELLEE,  
OF ADDITIONAL PARTS OF RECORD NECESSARY FOR CONSIDERA-  
TION BY THE COURT—Filed July 18, 1940

The United States of America, appellee, pursuant to Rule 13(9) states that the entire transcript of the record on appeal, as designated in the praecipes of the respective parties, is material, and that the parts of the transcript not designated by the appellants to be printed, as well as the parts designated by appellants to be printed, should be printed as part of the record on appeal.

N. A. Townsend, Acting Solicitor General.

July 17, 1940.

[fol. 184½] [File endorsement omitted.]



[fol. 185] Service acknowledged this 19th day of July, 1940.

Randell S. Cobb, First Assistant Attorney General of Okla., Attorney for appellant.

Endorsed on cover: Enter Villard Martin. File No. 44550. Northern Oklahoma, D. C. U. S. Term No. 201. Leon C. Phillips, Individually and as Governor of the State of Oklahoma, Mac Q. Williamson, Individually and as Attorney General of the State of Oklahoma, et al., etc., Appellants, vs. The United States of America, Grand River Dam Authority, Ray McNaughton, et al., etc. Filed July 2, 1940. Term No. 201 O. T. 1940.

(779)

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## STIPULATION AND ADDITION TO RECORD

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[fol. 572] IN THE SUPREME COURT OF THE UNITED STATES

No. —

LEON C. PHILLIPS, et al.; Appellants

vs.

UNITED STATES OF AMERICA, et al. Appellees

### STIPULATION

It is Hereby Stipulated by and between the parties to this action that the clerk of the United States District Court for the Northern District of Oklahoma may certify to the Clerk of the Supreme Court of the United States, letter dated March 4, 1940 addressed to Mr. John M. Carmody, Administrator, Federal Works Agency, Washington, D. C., signed by T. P. Clonts, General Manager, Grand River Dam Authority, Vinita, Oklahoma, which letter reads as follows:

"When the Board of Directors of the Authority was in Washington recently you suggested, in the conference, that the liability of the Authority for inundating State roads and bridges ought to be settled by litigation. After the return of the members of the Board to Oklahoma, the Chairman of the Board received a letter from you enclosing a copy of a letter which you had written to Governor Leon C. Phillips, both relative to the road controversy. Thereafter, on February 28, 1940, representatives of the Authority held a conference with the Governor at Tulsa, Oklahoma, relative to the settlement of the controversy, and particularly with reference to the Governor's threat to stop the closing of the dam through the use of the State Militia.

At this conference the Governor stated that he did not want to be both court and jury in this matter, but indicated rather forcefully that he did not intend to sit by and permit the closure of the dam and the inundation of roads and bridges without any other assurance of the liquidation of any judgment that might be recovered in court than payment out of the surplus revenues of the project after operating expenses and debt service charges are met. [fol. 573] The Governor, however, indicated that if he had satisfactory

assurance from you, as Administrator of the Federal Works Agency, that in the event a final judgment was later obtained by the State against the Authority, the Government would make available and consent to the application of sufficient funds to liquidate the judgment, he in turn would permit the Authority's liability to be litigated in the courts and abide the final outcome of such litigation.

This attitude on the part of the Governor was communicated to Mr. Charlie McCall, Acting General Counsel for P. W. A., on February 29, 1940, by Mr. Peter J. Chamales, who is attorney for the Project Engineer. As the Authority is advised, Mr. McCall suggested to Mr. Chamales that the Authority should make a formal request upon the Administrator of the Federal Works Agency for such assurance in order that appropriate action might be taken by the Administrator.

Accordingly, the Board of Directors has adopted today a resolution requesting this assurance and that sufficient funds be made available and applied to the liquidation of any final judgment obtained by the State in the courts. A certified copy of this resolution is transmitted herewith for your consideration. The Board of Directors would appreciate your giving the assurance requested and making available funds to liquidate any judgment finally obtained in the contemplated litigation.

The situation is serious and the Authority would appreciate advice from you at the earliest possible moment."

And it is Further Stipulated that this is a copy of the letter which was introduced in evidence as a part of Government's Exhibit 22.

And it is Further Stipulated that said letter so certified by the Clerk of the United States District Court for the Northern District of Oklahoma may be considered as a part of the record in the United States Supreme Court of the United States.

Mac Q. Williamson, Attorney General of the State of Okla.; — — —, Assistant Attorney General of [fol. 574] the State of Okla.; Ramsey, Martin and Logan, by Villard Martin, (by Mc. Q. W.), Attorneys for Appellant, for and on behalf of the United States; Francis Biddle, Solicitor General, Assistant United States Attorney for the Northern District of Oklahoma.



[fol. 575] [Endorsed:] No. 201. In the Supreme Court of the United States. Leon C. Phillips, et al., Appellants vs. United States of America, et al., Appellees. Stipulation.

[fol. 576]

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

No. 201

LEON C. PHILLIPS, et al., Appellants,

VS.

UNITED STATES OF AMERICA, et al., Appellees

Appeal from the United States District Court for the Northern District of Oklahoma

[fol. 577]

Copy

March 4, 1940.

Air Mail

Mr. John M. Carmody, Administrator, Federal Works Agency, Washington, D. C.

DEAR SIR:

When the Board of Directors of the Authority was in Washington recently you suggested, in the conference, that the liability of the Authority for inundating State roads and bridges ought to be settled by litigation. After the return of the members of the Board to Oklahoma, the Chairman of the Board received a letter from you enclosing a copy of a letter which you had written to Governor Leon C. Phillips, both relative to the road controversy. Thereafter, on February 28, 1940, representatives of the Authority held a conference with the Governor at Tulsa, Oklahoma, relative to the settlement of the controversy, and particularly with reference to the Governor's threat to stop the closing of the dam through the use of the State Militia.

At this conference the Governor stated that he did not want to be both court and jury in this matter; but indicated rather forcefully that he did not intend to sit by and permit the closure of the dam, and the inundation of roads and

bridges without any other assurance of the liquidation of any judgment that might be recovered in court than payment out of the surplus revenues of the Project after operating expenses and debt service charges are met. The Governor, however, indicated that if he had satisfactory assurance from you, as Administrator of the Federal Works Agency, that in the event a final judgment was later obtained by the State against the Authority, the Government would make available and consent to the application of sufficient funds to liquidate the judgment, he in turn would permit the Authority's liability to be litigated in the courts and abide the final outcome of such litigation.

This attitude on the part of the Governor was communicated to Mr. Charlie McCall, Acting General Counsel for P. W. A., on February 29, 1940, by Mr. Peter J. Chamales, who is attorney for the Project Engineer. As the Authority is advised, Mr. McCall suggested to Mr. Chamales that the Authority should make a formal request upon the Administrator of the Federal Works Agency for such assurance in order that appropriate action might be taken by the Administrator.

[fol. 578] Accordingly, the Board of Directors has adopted today a resolution requesting this assurance and that sufficient funds be made available and applied to the liquidation of any final judgment obtained by the State in the courts. A certified copy of this resolution is transmitted herewith for your consideration. The Board of Directors would appreciate your giving the assurance requested and making available funds to liquidate any judgment finally obtained in the contemplated litigation.

The situation is serious and the Authority would appreciate advice from you at the earliest possible moment.

Yours very truly, Grand River Dam Authority, by  
T. P. Clonts, General Manager.

RLD:ms.

Enclosure.

[fol. 579] Clerk's Certificate to foregoing transcript omitted in printing.

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